UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

IAN POLLARD, on behalf of all himself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
REMINGTON ARMS COMPANY, LLC, et al.	)	Case No. 4:13-CV-00086-ODS
Defendants.	)	

AFFIDAVIT OF TODD B. HILSEE ON FAILURES OF "RE-NOTIFICATION" AND OUTLINE OF MAJOR NOTICE AND CLAIMS PROCESS PROBLEMS

I, TODD B. HILSEE, have personal knowledge of the matters herein, and I believe them to be true and correct. After being duly sworn under penalty of perjury, I state as follows:

1. This report provides a concise outline of major notice and claims process problems.[1] My opinions are supported by proof.

2. The very low claims rate (0.26%),[2] even after "Re-Notification," results from foreseeable problems with the notice plans, the notice content, the notice designs, deterrents in the claims process, faulty information provided to the Court, and material omissions. The low

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[1] I have studied the various submissions of January 17, 2017. I continue to work *pro bono* in this case.

[2] 7.49 million (99.74%) of the 7.51 million rifles included (*See* Arsenault Dec., ECF No. 180-8, p. 13) would remain un-repaired. Fewer would be repaired if any of the total claims reported in the Ferrara Dec., ECF No. 180-13, p. 4 are for vouchers. Some additional claims will be filed; but it is well established that notice drives claims, and notice is over.

claims rate, and the potential risk of death and injuries associated with it, does not reflect an informed Class choosing not to file claims.

OUTLINE OF MAJOR NOTICE AND CLAIMS PROCESS PROBLEMS THAT CAUSED THE RESPONSE FAILURE

(**Note to reader: click each "Blue" item to jump to that section. "Blue" EXHIBIT type may also be clicked to view exhibits, and then return to document**).

3. The alleged unavailability of targeted mailing addresses in Remington's files is not credible; e.g., warranty and repair records contain physical addresses and are model specific; the number of such mailing addresses has been withheld;

4. Mailed notice is most reliable and effective, as studies show and prior Remington class actions and recalls prove; hundreds of thousands if not millions of guns could be made safe if more mailings were done;

5. It was reasonable to seek and identify Class members' mailing addresses from third parties; available sources of addresses were not even asked to help;

6. The Original Notice plan was not the best notice that was practicable and could not have reflected the "desire to actually inform" notice communications standard;

7. The "Re-Notification" plan was weak and its failure was foreseeable; the percentage increase in claims is meaningless because the starting point is so low;

8. The notices neither informed Class members how they, their families, their friends, and the public, they may be at risk of death and injury, nor directed them to company documents describing the defect; defect-denial language squelched response;

9. The notices were not designed to draw attention, in contrast with Federal Judicial Center model notices, Remington's sales ads, and its affiant's political ads;

10. The claims process was onerous and uninviting; it appears it did not intend to repair a meaningful number of guns; and

11. The settling parties and its affiants have withheld basic data that merit an adverse inference regarding the sufficiency of the effort.

SUPPORT FOR MAJOR NOTICE AND CLAIMS PROCESS PROBLEM AREAS

THE ALLEGED UNAVAILABILITY OF TARGETED MAILING ADDRESSES IN REMINGTON'S FILES IS NOT CREDIBLE. TOP

12. The new Crouch Dec. states that the "*only list of customers…targeted to the Settlement Classes*," is of 2,571 already repaired rifles; that Remington does not have "*any records containing the names of consumers who purchased the firearms at issue in the Settlement Classes*"; and that its other databases are not "*targeted or specific to members of the Settlement Classes.*"[3] These statements appear to be misleading at best.

13. Citing Ms. Crouch, the settling parties call the direct notice "over-inclusive."[4] But 99% of the Class did not get mailed notice,[5] and only the safest people—those who already had their rifle repaired—got the best notice: mailed notice with a claim form. In fact, as extensively covered in the Hilsee Affidavit:[6]

a. **Remington collects warranty cards that capture names, mailing addresses, and model numbers**. *See* EXHIBIT 1. This data is highly targeted. Ms. Crouch does not state how many warranty cards there are, or how many addresses.

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[3] Crouch Declaration, ECF No. 180-10, Jan. 17, 2017.

[4] *See* Joint Response to Objectors, ECF No. 178, at p. 3.

[5] 95,571 individuals were sent direct mail, or 1.2% of the Class guns. 1,000,000 others were sent only a bulk email despite the likelihood that mailing addresses were available for many or all.

[6] *See* Hilsee Affidavit, ECF No. 150-3, at p. 8, 12, 21, 25, 26, 27, 28, 29, 60, and Ex. A thereto, Hilsee Amicus Letter, at p. 3, 9, 16, 17, 22, and Exh. 1, and Exh. D to Hilsee Affidavit.

b. Remington's warranty card database was so numerous that in 1996, in *Garza v. Sporting Goods*, 263,000 names and addresses were reasonably identifiable from warranty cards.[7] *See* **EXHIBIT 2**.

c. **Records relating to "repair work** performed by Remington," cited in Crouch Dec. (allegedly un-targeted) **would be model specific with addresses** associated with them,[8] as shown in records of some 2,000 or more records in the proposed *amici* submitted by ten attorneys general.[9]

d. Remington's 600 series recall in 1979 relied heavily on direct mailed notice—indeed mailings accounted for 2/3 of the advertising budget.[10] *See* **EXHIBIT 3**.

e. It seems Remington has mixed untargeted data together with targeted data and thus inappropriately touts the effort as overbroad,[11] to justify cheaper and less-effective email, and perhaps to justify not matching and sending claim forms to identifiable Class members.[12]

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[7] *Garza* was extensively covered in the Hilsee Affidavit at p. 5, 6, 8, 13, 14, 24, 25, 26, 27, 28, 57, 72, Exh. D, Exh. E, and Exh. X.

[8] Those who "contacted Remington's customer service lines" may also have model and contact information; Complaints Remington received may also contain model and address information.

[9] *See* Brief of Amici Commonwealth of Massachusetts, District of Columbia, and the states of Hawaii, Maine, Maryland, New York, Oregon, Pennsylvania, Rhode Island, and Washington in Support of Objections to the Settlement, ECF No. 176, Exh. 20-22.

[10] The 1979 recall was extensively covered in the Hilsee Affidavit at p. 15, 23, 24, 72, and Exh. U, showing that, at the time, 200,000 guns (600 series) were involved, and $200,000 was devoted to mailings and $40,000 to ads. $240,000 in 1979 equates to $836,493 today, and there are 37.5 times more guns involved in this settlement than the 1979 recall. Thus a notice budget substantially greater than likely has been spent here would have been reasonable. http://www.saving.org/inflation/inflation.php?amount=240,000&year=1979.

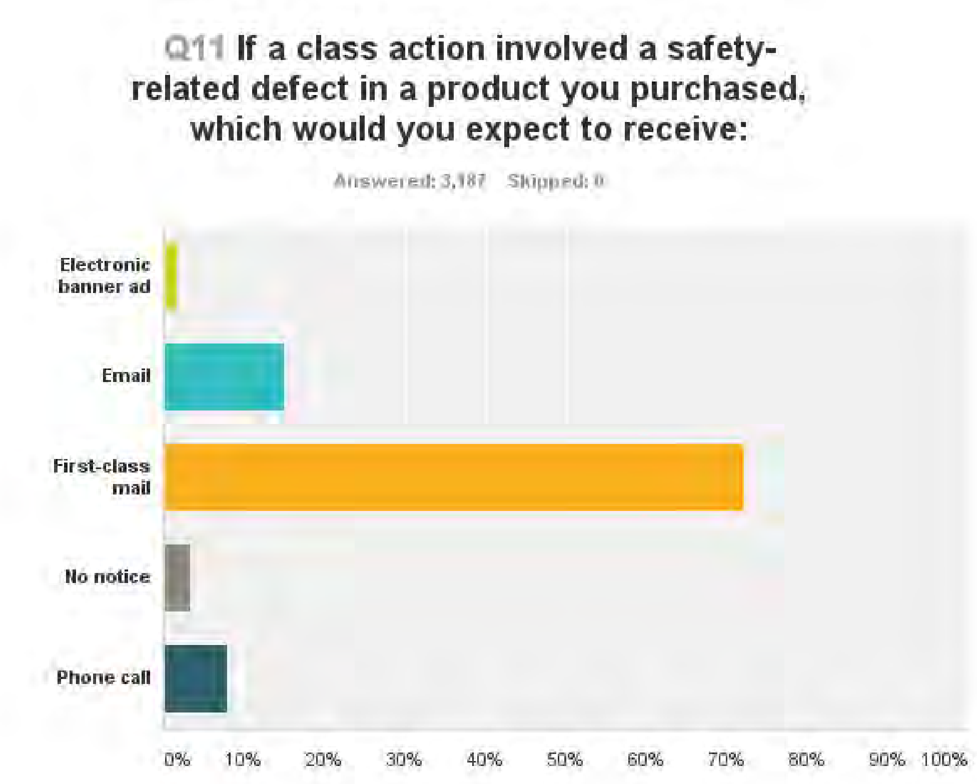
[11] *See* Crouch Dec., at par. 7.

[12] The "safest" 2,571 members of the Class got the best notice—mailings—twice (during the Original Notice and during the "Re-Notification"). And, this is only group that received a claim form with their "Re-Notification" mailing because the "*claim formed* (sic) *needed by the 2,571 individuals receiving a refund was known*." Crouch Dec. at p. 4. Clearly, more model-specific records were available and more Class members could have had a claim form matched and sent to them (if separate claim forms were necessary—*see* paragraph 22 a. below).

MAILED NOTICE WITH CLAIM FORMS IS MOST EFFECTIVE AND COULD HAVE MADE HUNDREDS OF THOUSANDS OR MILLIONS OF GUNS SAFE. TOP

14. Unrebutted data shows that mailed notice—not email and certainly not banner ads—is most effective for reaching Class members and garnering response, is most reliable, and is expected by U.S. adults for class actions—especially in situations involving a safety defect.

a. I have commissioned, at my own expense, a statistically significant study by SurveyMonkey® showing most U.S. adults find first-class mail more reliable than electronic means, and overwhelming percentages expect to receive a class action notice by first-class mail when their address is identifiable.[13] *See* EXHIBIT 4.


Q11 If a class action involved a safety-related defect in a product you purchased, which would you expect to receive:
Answered: 3,187 Skipped: 0
Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

[13] Graphic shows chart re: consumer expectations for notice involving safety defect. *See* all results in EXHIBIT 4. The Hilsee Group "Notice Reliability Study" included 3,187 respondents—men and women of all ages, from all over the United States; accurate to a 95% confidence interval and a 1.8% margin of error. These results were consistent across demographics including for all men and for older men.

b. In *Garza*, pursuant to notice that included direct mail and a claim form to 263,000 warranty card records, claims were filed for 820,708 or 10% of the guns. Here 10% repaired would equate to 751,000 safe guns in this case.[14] *See* **EXHIBIT 5**.

c. The 1979 recall of 600-series rifles shows a direct mail-heavy effort helped secure a 13% claims rate, which would translate to 975,000 safe guns here.[15]

d. Claims administrators know that mailed notices with claim forms work best:

   i. The nation's oldest claims administrator provided data to the FTC showing typical response rates exponentially higher from mailed notices with claim forms. *See* summary in **EXHIBIT 6.**

   ii. The settling parties' vendor Steven Weisbrot co-authored a publication advising his clients that direct mailings with claim forms work better than email.[16] *See* **EXHIBIT 7**.

   iii. Mr. Weisbrot's former firm testified that settlements with little to no direct mail notice will almost always have a claims rate of less than one percent."[17] *See* **EXHIBIT 8.**

e. Mail is opened at much higher rates than email (U.S. Postal Service data shows 75% read or scan even advertising mail. *See* **EXHIBIT 9**;[18] whereas only 7-24% of bulk-sent emails are opened.)[19] *See* **EXHIBIT 10**.

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[14] *See supra* footnote 7, re: *Garza* facts and data including regarding the simple claim form that could be replicated in *Pollard*.

[15] *See supra* footnote 10, re: 1979 recall facts and data.

[16] *See* Hilsee Affidavit at p. 30, 67, Exh. A, Hilsee Amicus Letter at p. 10, Exh. F.

[17] Affidavit of Deborah McComb, *Poertner v. Gilette*, M.D. Fla, Case No. 12-00803, ECF No. 156; *See also* discussion in Hilsee Affidavit, at p. 30, 68, Exh. A, Hilsee Amicus Letter, at p 24.

f. The settling parties were wrong to hold out a proposed amendment to Rule 23(c)(2) and accompanying Committee notes as suggesting that emails can now be used in lieu of mailings.[20] The Rule has not changed, and the change to that portion of the Rule or the Committee notes may not be approved.[21]

IT WAS REASONABLE TO SEEK AND IDENTIFY CLASS MEMBERS' MAILING ADDRESSES FROM THIRD PARTIES. TOP

15. By mis-characterizing my proposal, the settling parties incorrectly maintain that third-party records of Class members cannot be used:

a. The settling parties persist in characterizing my proposal to use model-specific names and addresses on Form 4473 that Remington's retailers have, as if I suggest "legal process" or "subpoenas,"[22] and they allege that is improper. My actual suggestion is that third-party retailers be asked to help in sending mailings

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[18] *See* Hilsee Affidavit at p. 64. Note: A class action notice is not advertising and FJC model envelope designs now counter such perceptions. *See* Hilsee Affidavit at p. 65.

[19] *See* Hilsee Affidavit at p. 7, 9, 32; Class counsel admitted in court "*I delete a lot email without looking at them.*" Eric D. Holland, Transcript of Evidentiary Hearing, Aug. 2, 2016, p. 56, l. 6-8.

[20] *See* Joint Response to Objectors, ECF No. 178, at p. 6.

[21] *See* https://www.regulations.gov/contentStreamer?documentId=USC-RULES-CV-2016-0004-0002&disposition=attachment&contentType=pdf The public comment period doesn't end until Feb. 15, 2017; "*At this time, the Committee on Rules of Practice and Procedure has not approved these proposed amendments, except to authorize their publication for comment. The proposed amendments have neither been submitted to nor considered by the Judicial Conference or the Supreme Court. If approved, the proposed amendments would become effective on December 1, 2018, with or without revision, by the relevant advisory committee, the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court, and if Congress does not act to defer, modify, or reject them.*"

It turns out that the idea that electronic notice may be "more reliable" was not supported by data or research, and the **Reliability Study attached as EXHIBIT 4 has been presented to the Advisory Committee**. Widely-regarded class action notice expert Katherine Kinsella opposes the rule change proposal, has echoed notice industry "race to the bottom" issues, and has further explained the importance of physical mail when addresses are reasonably identifiable: https://www.regulations.gov/document?D=USC-RULES-CV-2016-0004-0060.

[22] Joint Response to Objections, ECF 178 at p. 7; *but see* Hilsee Affidavit at p. 33, Exh. AA, and Exh. A, Hilsee Amicus Letter at p. 11.

and get reimbursed for it, just as is done in thousands of class actions.[23] *See* **EXHIBIT 11**.

b. Similarly, they persist in characterizing my suggestion on NRA membership data as if I suggest "purchasing" it, alleging the NRA will not allow that. In fact, the suggestion is to ask for exactly what the NRA advertises: that Remington, as an "affinity partner," may use the list to help gun owners in the common interest of safer guns for NRA members and Remington. *See* **EXHIBIT 12**.

c. Tellingly, the Massachusetts Attorney General has suggested that Remington could have at least simply asked for use of some 11 state-controlled lists of gun owner records for purposes of notice.[24]

d. Even if my suggestion had been to undertake subpoenas to third parties, Mr. Weisbrot has testified in favor of third-party subpoenas.[25] *See* **EXHIBIT 13**.

THE ORIGINAL NOTICE PLAN RE: RULE 23 AND DUE PROCESS TOP

16. The facts highlighted in par. 12-15 above support my opinion that the Original Notice was not the best practicable and did not provide individual notice to all those reasonably identifiable, especially when mailed notice (with claim forms) would only cost 32 cents each.[26]

17. In lieu of reasonably identifiable mailings, the notion that the Original Notice effectively reached the Class by other means has been debunked with unrebutted data and proof:

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[23] Mr. Weisbrot' s firm, like many others, employ notice to third parties asking for assistance delivering notice to Class members in securities litigation. *See* Hilsee Affidavit at p. 34, Exh. BB, and Hilsee Amicus Letter at p. 13-14.

[24] *See* Brief of Amici, ECF No. 176 at p. 18.

[25] *See* Declaration of Steven Weisbrot in *Melgar v. Zicam*, citing his support of such efforts. (*See* Hilsee Affidavit at, Exh. A Hilsee Amicus Letter, p. 12-13.

[26] *See* Hilsee Affidavit at p. 31.

a. A banner ad was alleged to reach 40.57% of the Class,[27] but this was proven inflated by 227% (comScore data shows reach of 12.3-12.4%)[28] *See* **EXHIBIT 14**.[29]

b. Banner ads are counted as "reaching" someone if *"½ the pixels are in view for at least 1 second."*[30] That is weak notice to bind a person who does not click, especially where notice might save a life, or where lack of notice could cost a life. Few people click these ads (0.04% on average) *See* **EXHIBIT 15**, and *Google* acknowledges that most banner impressions are not viewable. *See* **EXHIBIT 15**.

c. A banner ad does not provide Rule 23-compliant notice to those who view it but never click or read a notice.[31]

d. The notice vendors and settling parties dismiss numerous industry reports of massive fraudulent digital advertising impressions that inflate audiences.[32] But **digital ad fraud is real and Congress is concerned**. *See* **EXHIBIT 16**, *and See* these short video clips: https://youtu.be/GwYN0MGE3RQ, https://youtu.be/MwXdDRPqBTM, and https://youtu.be/mgZd18F22bM.[33]

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[27] *See* Weisbrot Dec., ECF No. 139-1, at p. 9.

[28] Other experts have been finding such inflated assertions. *See* Wheatman and Gehring, (trained media experts finding alleged 70% reach, actually was 16%) Hilsee Affidavit at p. 68-69 and Exh. S; *and see* Finegan, (trained media expert finding claimed reach of 60% reached 9% and finding claimed 75% reach was actually 36%) Hilsee Affidavit at p. 68-69.

[29] Additionally, the notice vendor here did not account for non-viewable banners (*See* Hilsee Affidavit at p. 8, 46-47), inflated his reach by misuse of frequency capping (*See* Hilsee Affidavit at p. 45, 56), provides no transparency of where banners appeared requiring the adverse inference that low-quality websites were included which are even more susceptible to fraudulent exposures (*See* Hilsee Affidavit at p. 47), and didn't account for ad blocking (*See* Hilsee Affidavit at p. 43, Exh. A Hilsee Amicus Letter at p. 7, and Exh. M) among other problems.

[30] http://www.mediaratingcouncil.org/081815%20Viewable%20Ad%20Impression%20Guideline_v2.0_Final.pdf.

[31] *See* Hilsee Affidavit at p. 35-37, 66, and Exh. A, Hilsee Amicus Letter at p. 8, 19, 20.

[32] *See* Hilsee Affidavit at p. 8, 44-46, 48, 51, Exh. A, Hilsee Amicus Letter, at p. 7, 28, and Exh. D., Exh. K, and Exh. M.

e. The publication audiences were overstated by the notice vendors. The supposed reach of the magazine plan was not "*firmly 57% of rifle owners*."[34] I proved this was inflated by 35%; that the real reach was only 42.2%.[35] *See* **EXHIBIT 17**.

f. The overstated reach of the Original Notice (the 227% banner ad inflation and 35% publication inflation) render the alleged 74% reach assertion false.[36] The true statistical reach was just about half the Class,[37] and those "statistically" exposed were exposed to notices that were neither noticeable (par. 21 below), nor compelling (par. 20 below).

g. Many notice choices did not reflect a desire to actually inform, including:[38] **i)** the lack of mailings despite reasonability to do so, **ii)** fleeting banner ads and emails in lieu of mailings, **iii)** ads that did not stand out like ads selling guns do, **iv)** claim-deterring defect-denial notice language (Par. 20 below), **v)** press interviews that were declined but could have urged claims,[39] and **vi)** the notice vendor's lack of "*grave concern*" about personal injuries—hyping "*economic loss*" when notice can prevent deaths and injuries.[40]

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[33] Short videos from Bloomberg Business, Dr. Augustine Fou, Marketing Science, Inc., and Duncan Trigg, VP comScore explain digital ad fraud. Note: these and many news stories and videos are contemporaneous with the Original Notice campaign. The problem continues to grow today. *See* **EXHIBIT 16**.

[34] *See* Weisbrot Dec., ECF No. 139-1, at p. 7

[35] *See* Hilsee Affidavit at p. 53-54, and Exh. O and Exh. P.

[36] Mr. Weisbrot improperly targeted a different audience than he measured, *See* Hilsee Affidavit at p. 54. Mr. Garretson showed no understanding of reach and frequency media measurement concepts. Garretson Dec., ECF No. 139-2 "*every mass communications program cannot logically be assessed using decades-old industry methods and data*," *but see* David Smith, Advertising Media Planning, forward, p. xiii: "*Digital media have learned from their traditional media forbearers the value of having commonly accepted standard ways of defining and measuring advertising exposure*." Hilsee Affidavit, at p. 56.

[37] *See* Hilsee Affidavit at Exh. A, Hilsee Amicus Letter at p. 2-3, 8, 20, 22.

[38] I have long respected the Supreme Court's ruling stating "*when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it*." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950). *See* Hilsee et al, Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform," 18 GEORGETOWN JOURNAL OF LEGAL ETHICS 1359 (Fall 2005).

THE "RE-NOTIFICATION" PLAN FAILURE WAS FORESEEABLE; THE INCREASE IN CLAIMS WAS MEANINGLESS. TOP

18. The "Re-Notification" moved claims from 6,500 to 19,425;[41] thus 0.086% had made claims, and now 0.258% have. In other words, out of 7.518 million guns, 7.511 million would have been un-repaired, and now some 7.498 million guns apparently will remain unrepaired. This is appalling for a settlement purporting to be worth of $487 million based on full participation. Contrast this result with the $336 million *In re Currency Conversion Fee Antitrust Litigation* settlement, where an initial failed notice was re-noticed with better, more expansive mailings, media, and a revised claim form, driving claims from 90,000 claims to over 10 million claims. 27% of the 38 million mailings resulted in claims.[42] *See* **EXHIBIT 18**.

19. Claim response aside, the "Re-Notification" effort does not reflect an informed Class that *chose* not to claim. The effectiveness was over-promised to the Court, and the results are suspicious:[43]

Facebook Advertising

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[39] *See* Hilsee Affidavit at p. 34.

[40] *"This case concerns the diminution of the value of certain Remington Rifles. This is not a case about personal injuries or wrongful death…Obviously, had this been a personal injury action, I would harbor the very same grave concern about class member safety that Mr. Hilsee offers—who wouldn't?"* Weisbrot Dec., ECF No. 139-1, p. 3-4. This is out of sync with the complaint (failed to disclose defect that would cause harm). *See* Hilsee Affidavit at p. 18-19. I also find it callous and blind to ethical standards of notice.

[41] *See* Ferrara Dec., ECF No. 180-13, p. 3.

[42] *See* Francis McGovern, OHIO STATE JOURNAL ON DISPUTE RESOLUTION, Vol. 24:1 2008, p. 53-58,

[43] This was predicted. *See* Hilsee Affidavit and Exh. A, Hilsee Amicus Letter *generally*.

a. The notion that *Facebook* ads reached 4.1 million "*potential Class members*" is spurious.[44] There is no telling how many rifle owners are in this number, and of those, only a certain fraction are Remington owners.[45] Also GfK MRI data shows that only 52.8% of rifle owners use *Facebook* at all. *See* **EXHIBIT 19**. Thus, all else being equal, perhaps half of the owners of 7.5 million Remington guns may use *Facebook*. Thus, the notion that over half the Class (4.1 million / 7.5 million) "potentially" saw these ads, might require more than every Remington rifle owner using *Facebook* to have seen the ad.[46] The ad budget, if revealed, would likely prove the false implication.

b. The vendor has ready access to *Facebook* Ad Manager detailed reports on the real results. *See* **EXHIBIT 20** and compare with paucity of facts and proof in Garretson Dec. ECF No. 180-11, par. 28, or the Ferrara Dec., ECF 180-13.

c. The 327,427 supposed "clicks" purport to show people going to the notice website, but that is inflated and misleading.[47] *See* articles on inflated *Facebook* ad audiences and clicks **EXHIBIT 21**, *and See* this short video for an understanding of Facebook advertising overpromises: https://youtu.be/oVfHeWTKjag.[48]

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[44] *See* Garretson Dec., ECF No 180-11, at p. 13., Par. 28. In fact the notion that any of these

[45] I do not have definitive data on Remington's share of rifles in circulation.

[46] The Facebook page Likes, Shares and Comments stemming from two posts were very modest, suggesting the true exposure was minimal. *See* Hilsee Affidavit at p. 50-52.

[47] *See* Hilsee Affidavit, at p. 50-51. The vendors have not submitted readily available Google Analytics data to corroborate Facebook clicks, which are often over-stated. *See* **EXHIBIT 16**, Letter from Sen. Schumer and Sen. Warner to FTC, July 11, 2016, citing Adrian Neal, Quantifying Online Advertising Fraud: Ad-Click Bots vs. Humans, Jan. 2015, http://oxford-biochron.com/downloads/OxfordBioChron_Quantifying-Online-Advertising-Fraud_Report.pdf: "*According to one study, between 88 and 98 percent of all ad-clicks on major advertising platforms such as Google, Yahoo, Linkedln, and Facebook in a given seven-day period were not executed by human beings.*"

[48] Veritasium 2014 video regarding research explaining suspicious and fraudulent Facebook ad results. A 2015 Oxford study also found that 80-90% of clicks on Facebook were non-human. Critics often report audience inflation has been stemmed, but then new revelations arise. *See* 2016, *Wall Street Journal*, Facebook Overestimated Key

d. It is telling that no website visitation statistics have been provided for www.remingtonfirearmsclassactionsettlement.com despite immense detail readily available to the claims administrator through Google Analytics. Compare the details available as seen in **EXHIBIT 22** (*e.g.*, when and how many unique people clicked banners, read notices and claim forms, and where website traffic originated), with the Ferrara Dec., ECF No 180-13 which provides no website visitation information at all, let alone the "details" the Court's August Order requires.[49]

e. The settling parties' hype the "1.09 billion Facebook users"[50] but a potential audience who did not actually see an ad means nothing. Leading brands digital ad budgets show what it really costs to expose large national audiences via digital ads.[51] *See* **EXHIBIT 23**.

f. The settling parties and its affiants have not denied that popular firewalls block traffic to "gun-related" websites. Many of the clicks from ads to the website may have simply been blocked.[52] *See* **EXHIBIT 24**.

g. The settlement *Facebook* page is empty but for two posts denying the Sandy Hook and Orlando club shootings were real. *See* **EXHIBIT 25**.

Radio Advertising

Video Metric for Two Years, *See* **EXHIBIT 21**. These realities are why it actually costs millions of dollars to truly engage large nationwide audiences with Facebook ads.

[49] Order, ECF No. 140, p. "*The Class Action Settlement Administrator shall file with the Court the details outlining the scope, method, and results of the Plan no later than 28 days before the Final Approval Hearing.*"

[50] *See* Garretson Dec. at p. 3, and

[51] Kantar Media report reveals the spending required to capture awareness and audience attention. The top 50 U.S. brands 2016 **digital ad spending**, range from #50, the United States Treasury, **spending $20 million in 2016**, to #1, Freecreditreport.com, **spending $192 million in 2016**. Indeed Pres. Obama's success in digital was in no small part due to his digital ad budget: $21 million in 2008. (Hilsee Affidavit at Exh. A, Hilsee Amicus Letter at p. 28)

[52] *See* Hilsee Affidavit at p. 43 which detailed this problem.

h. Only 28 gross rating points (GRPs) were purchased in national network radio over a four-week period.[53] This is a drop in the bucket. Depending on the average frequency (unstated), this miniscule schedule would reach as low as 2% to as high as 14% of whatever media demographic (unstated) was targeted. A *minimal* schedule on radio is 60-75 GRPs each week, and a typical schedule would involve 100 to 150 GRPs each week. By comparison, the radio schedule in Class Counsel Arsenault's *West v. G&H Seed* case ("Crawfish Farmers")[54] consisted of an average of 295 GRPs per radio market over two weeks.[55]

i. The notion that the radio "*covered 98% of United States geographically*" is disingenuous. Geographical coverage area means nothing if few people hear the ad. Linking geography to the actual schedule (only 28 GRPs) renders the 98% implication utterly misleading,[56] when the audience reach was between 2% and 14%.

Posters

j. The Court Ordered Remington to "*create and disseminate information posters for display at more than 11,000 retail locations*."[57] But Remington did not send 11,000 posters to 11,000 retailers. Instead, Remington executed this Order by emailing a PDF to twelve distributors and retailers, asking them to pass it on.[58]

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[53] As Mr. Garretson reported, 1 GRP represents 1% of a target population. He did not report his target, or the fact that GRPs include duplication. Low turnover stations will provide more frequency that high turnover stations.

[54] The Crawfish case was about economic loss—not personal safety, public danger, or health issues.

[55] Affidavit of Todd B. Hilsee on Design, Implementation and Analysis of Settlement Notice Program, *West v. G&H Seed*, 27th Jud. Dist. Ct., St. Landry Parish, La., Case No. 99-C-4984, May 6, 2004. Note: Direct Mail and other media notices were used calculated to reaching 85%+ of the target audience.

[56] "*In sum, the National Network Component covered 98.2% of the United States geographically, with 28.7 gross rating points*." Garretson Dec., ECF No. 180-11, p. 8. Conflating geography with exposure to actual ads, by not disclosing the readily calculable metric of "reach" is misleading and improper.

[57] *See* Order, ECF No 140, p. 3.

[58] *See* Crouch Dec., ECF No. 180-10, p. 5.

We do not know: **i)** what the email stated, **ii)** what size the PDF was, **iii)** whether the twelve recipients sent it on to the retailers, **iv)** what *that* email stated, **v)** whether any retailers printed the PDF, **vi)** whether any printed it in color, **vii)** whether any enlarged it to poster size, **viii)** whether any actually posted it, and if so **ix)** whether any were prominent and visible.

k. There is no evidence that the effect of sending twelve emails with PDFs was anything but negligible. Reports from gun owners suggest posters are not being displayed at gun retailers.[59]

THE NOTICES OBSCURED THE POTENTIAL RISK OF DEATH AND INJURY. THIS SQUELCHED RESPONSE. TOP

20. The settling parties' affiants do not rebut any evidence or logic that avoidance of safety messaging, inclusion of denial language, and a misplaced focus on "economic loss" predestined low response to the trigger repair settlement offer:[60]

a. Company documents were posted to the internet in November 2016 (www.remingtondocuments.com). Notice was over by then, and no reference or link to these documents were in the "Re-Notification" notices or at the settlement website, even though Remington had agreed in October 2015 that "*Plaintiffs are free to make these documents available to potential class members*."[61]

b. The "Re-Notification" notices undermined concern about any danger in 85% of the guns, by focusing "stop using your firearm" only as to the 15% that are subject to the XMP recall. It is not correct that proper warnings have no place in connection with class actions when appropriate. For example, I designed and produced the warning shown in **EXHIBIT 26**.[62]

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[59] *See* Supplement to Pollard Objection, Jack Belk, ECF No. 168 p. 9; *See also* ECF No. 148, citing Richard Barber's concern to the Court having seen no posters at sporting goods stores.

[60] *See* Hilsee Affidavit at p. 5.

[61] See Letter from John Sherk to Charles Shaeffer, October 2, 2015, ECF No. 175-2 at p. 4.

c. "Typical" class actions do not have now-public documents at such odds with denials. It is one thing to include denial of legal liability in a court pleading. It is another to deny that which would motivate response to a settlement that would have no value if the triggers were already safe.

d. A notice that offers a trigger repair cannot stimulate response if the trusted gun manufacturer continues to argue, including in the notice, that there is nothing wrong with the trigger.

e. Social media posts show that—among many indications of accidental discharges—many people feel emboldened to believe that nothing is wrong with the trigger.[63] *See* **EXHIBIT 27**.

THE NOTICES WERE NOT DESIGNED TO DRAW ATTENTION, IN CONTRAST WITH FJC MODEL NOTICES AND REMINGTON SALES ADS. TOP

21. The notices were not designed to be noticed:[64]

a. The Original Notice in publications had no headline to draw attention. *See* **EXHIBIT 28**. Thus, statistically "reaching" people was illusory.

b. FJC standards, which the vendors purported to meet,[65] promote large, bold, subject-matter related headlines—unlike the Original Notice. *See* **EXHIBIT 29**.

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[62] This warning was produced and distributed in connection with various 15-passenger van litigation.

[63] *See* Hilsee Affidavit, Exh. C, showing comments to the "Re-Notification" Facebook ads.

[64] *See* Hilsee Affidavit at p. 10, 20-21, 39, 54, Exh. A Hilsee Amicus Letter at p. 3 and 8-9; *See also* FJC Judges' Notice and Claims Process Checklist at www.fjc.gov.

[65] *See* Weisbrot Dec., ECF No. 92-9, at p. 9.

c. The Original Notice 20-word banner ad, did not mention "rifle," "defect," "safety," or "trigger," and the photo was of a **shotgun** not a rifle. *See* **EXHIBIT 30.**

d. Remington's own ads **selling guns** are starkly different: they have attention-getting headlines and colorful pictures of rifles. *See* **EXHIBIT 31.**

e. The "Re-Notification" notices undermined a reference to "alleged safety defect" in the subhead by first focusing on "economic loss." *See* **EXHIBIT 32**.

f. The Facebook ads do not mention "safety" or "defect"—nor any reason one would want to "replace a trigger." They shift blame to owners, by highlighting "you can't be too careful" and "how well do you know your rifle." *See* **EXHIBIT 27**.

g. The "Re-Notification" postcards did not attach a claim form, *See* **EXHIBIT 33.**

h. The "Re-Notification" emails did not have "CLICK TO CLAIM" or a claim form attached, *See* **EXHIBIT 34**.

i. The *Garza* notices had bold model-specific headlines, and included (in the published notice and in the mailings) a short, simple claim form. *See* **EXHIBIT 35.**

j. The "Re-Notification" ads are in stark contrast with the bold, specific, attention-getting ads that Mr. Messina ran for Pres. Obama.[66] *See* **EXHIBIT 36**.

THE CLAIMS PROCESS WAS ONEROUS AND UNINVITING; NOT DESIGNED TO REPAIR A MEANINGFUL NUMBER OF GUNS. TOP

[66] The Garretson Dec. fails to reveal the ad budget of the "Re-Notification" or acknowledge the disconnection with the promises to leverage political campaign advertising experience: Mr. Messina spent $483 million, mostly on television, to elect Mr. Obama. *See* Hilsee Affidavit, Exh. A, Hilsee Amicus Letter at p. 2, 25 and 28.

22. My opinions on claims process flaws were not seriously challenged and are unrebutted,[67] including:

a. 17 pages of separate model-specific forms were unnecessary. Multiple models and triggers do not require such complexity.[68] One claim form asking for name, address, model number, serial number, checkboxes, plus some description, would allow the administrator to handle the rest. Simplicity increases claims.[69]

b. *Garza* involved multiple shotgun models, but the claim form needed only 1/3 of one page. *See* **EXHIBIT 35**.

c. For those Class members in Remington's massive set of warranty cards and other model-specific data, claim form data could have been pre-filled, with return postage prepaid.[70] Convenience would have driven exponentially higher response.[71]

d. Claim forms could have been attached to mailings for all models using warranty card and other model-specific data reasonably identifiable and readily available to Remington. The Crouch Dec. makes a specious argument that only the 2,571 already repaired trigger recipients could be afforded such convenience.[72] Thus only the safest people got the most effective and convenient notice.[73]

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[67] *See* Hilsee Affidavit, Exh. A, Hilsee Amicus Letter at p. 2, 4, 16-18, 21, and 25.

[68] *See* Joint Response to Objectors, ECF No. 178, p. 10.

[69] *See* McGovern, *supra* footnote 40 and **EXHIBIT 18**.

[70] In client publications Mr. Weisbrot advocates such convenience, but has not in this case. *See* **EXHIBIT 7**.

[71] *See* Hilsee Affidavit at p. 7, 30, 39, and Exh. A, Hilsee Amicus Letter, at p.17, 21, 29, Exh. GG, Exh. II

[72] This argument is born from the unnecessary decision to construct different claim forms for each model, and is based on the false premise that other class members cannot be associated with model-specific records.

[73] *See* Crouch Dec., ECF No. 180-10, p. 4, "*Because the claim form needed by the 2,571 individuals receiving a refund was known…the appropriate claim form was included.*" *But see supra* par. 13. a-e. This is disparate treatment.

e. Allowing class members go to local gunsmiths, as in 1979,[74] could have been done again. While the settling parties argue that gunsmiths have declined,[75] Forbes reported in 2016 that "*Manta lists 15,615 gunsmiths in the United States today*."[76]

f. In many subtle ways, the claims process appears designed to fail.[77] Indeed, Ms. Crouch's statistics suggest that repairing all the rifles using the limited "bandwidth" of Remington's chosen claims process, could take years.

g. Facebook comments[78] suggest rifle owners want to believe Remington's defect denials. Some surely are reluctant to part with their guns for as long as might be required under the chosen claims process. But the settling parties' response to the concern of low claims—that it was expected[79]—suggests the selected claims process was never expected to work.

h. Safety repair of triggers through this settlement necessitates no claims process end date. If there was such an end date, the settlement would cost many Class members, whose guns are now subject to open recalls, the opportunity to repair their rifles, if and when they become aware later.

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[74] The convenience of going to one of 173 local gunsmiths where repairs would take "7 ½ to 10 minutes" was allowed by Remington during the 600 series recall in 1979. *See* Hilsee Affidavit, Exh. U.

[75] They base this on a supposed decline in "licenses." *See* Joint Response to Objectors, ECF No. 178, at p. 11.

[76] *See* Frank Miniter, Now The Obama Administration is After Gunsmiths?, *Forbes*, August 8, 2016. http://www.forbes.com/sites/frankminiter/2016/08/08/now-the-obama-administration-is-after-gunsmiths/#52fff5556642, last visited January 28, 2017.

[77] It is symptomatic that on the FAQ page of the www.remingtonfirearmsclassactionsettlement.com website, the notice vendor apparently took the extra effort required to de-hyperlink (make un-clickable) the recall website http://xmprecall.remington.com.

[78] *See* Hilsee Affidavit at Exh. C.

[79] *See* Joint Supplemental Brief Pursuant to the Court's Order of Dec. 8, 2015, ECF No. 127 at p. 5, "*[O]wners of firearms may be skeptical of any process that they perceive as analogous to firearms registration*." This simply raised the question why a process analogous to registration, and indeed "confiscation," would have been proposed.

MISSING BASIC DATA WARRANTS ADVERSE INFERENCE ON SUFFICIENCY OF THE EFFORT. TOP

23. The Court's August Order required the Settlement Administrator to "*file with the Court the **details** outlining the scope, method, and results of the Plan.*" (emphasis added)[80] Certain basic omissions should be highlighted for the Court's attention:[81]

a. How many warranty cards does Remington have access to for models covered by the settlement?

b. How many physical addresses are on those warranty cards?

c. How many physical addresses are on any record Remington has access to relating to any of the models covered by the settlement?

d. How can 780,235 email addresses be "de-duplicated" (Crouch Dec. par 7) and become 1,000,000 email addresses (Crouch Dec. par. 8)?

e. How many unique visits were made to the settlement website? How many were there since the "Re-Notification" began?

f. How many unique views of the notice pages were there? How many were there for the claim form pages?

g. How many of the emails were opened? How many were not opened? How many bounced back?

h. Why don't Facebook posts link to a legitimate Facebook page?

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[80] *See* Order, ECF No. 140, Aug. 23, 2016, p. 4.

[81] *See also* Hilsee Affidavit, Exh. D, listing more data that should be made available to the Court to assess the notification and claims process effort.

i. How were addresses corrected before mailing? How many mailings were returned as undeliverable? How many were re-mailed?

j. How many phone calls were received since the start of the "Re-Notification"?

k. How many of the claims submitted are for vouchers?

l. How many claims have been submitted for each subclass?

m. Are any of the claims are obviously invalid?

24. In my opinion, these simple metrics should have been provided, as they are readily available to Remington and/or the claims administrator. Absent this data, one must presume the figures would belie the supposed success of the effort, and thus in my opinion subject to an adverse presumption.

25. In conclusion, as a 25-year court-recognized notice expert schooled in marketing and trained in media and media measurement with ad agency media experience,[82] I speak up about a struggling class action notice system, now echoed by many experts in this field.[83] Competing vendors feel powerless to act, because those who critique notice publicly are subject to "blackballing."[84] In addition to the public and the law, this hurts courts, especially in

[82] I am an independent notice expert, not a notice vendor or claims administrator involved in today's bidding wars. I have continually performed expert analyses of notice plans to assist courts ensure that notice efforts are the "best practicable," and meet the "desire to inform" standard of Due Process. I am proud of my 100+ judicial comments—68 by name. *See* Hilsee c.v. attached as **EXHIBIT 37**.

[83] *See* Shannon Wheatman and Alicia Goering, "*Increasingly, false information is being presented to Courts*" *supra* footnote 28; *See also* Jeanne Finegan "*This type of miscalculation of internet reach negatively impacts an entire outreach campaign…For this reason, courts have questioned unrealistic reports of internet audience delivery.*" *supra* footnote 28; *And see* Katherine Kinsella "…*the inexplicable race to the bottom by both plaintiff and defense attorneys, the increased submission of affidavits from "experts" who have little or no media training or experience is deeply troubling*." *supra* footnote 21.

[84] *See Forbes*, Banner Ads Are a Joke in the Real World, But Not in Class Action-Land, Sept. 15, 2016, "'*… whoever can come up with the cheapest bid and put an affidavit in that it meets standards of due process, that firm will be hired,' said Katherine Kinsella, the recently retired founder of Kinsella Media, which specializes in legal notification. 'It is a reverse auction.'… '**You can't critique anybody else's work publicly,' said Kinsella, who in retirement feels more free to speak. 'You're blackballed**'*" (emphasis added).

settlements where adversarial postures are already diminished.[85] As an expert who is not a vendor, I feel I must act, because of the Class members and others in the general public potentially at risk of death and injury from notice that was far less effective than it could have been, and because of the need for notice standards to remain as high as they have always been in high-stakes class action litigation.

26. I expected to be criticized for coming forward. I have read the disparaging public statements about me by name,[86] and they hardly deserve response.[87] I simply hope the Court finds my opinions helpful in deciding on the outcome.

Todd B. Hilsee

SUBSCRIBED AND SWORN TO BEFORE ME this 31st day of January, 2017

2296550
Maura Primus
Notary Public of New Jersey
My Commission Expires
February 11, 2018

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[85] The FJC Judges' Notice and Claims Process Checklist and Plain Language Guide studied cases where courts made "best practicable notice" findings and 89% were in the context of settlement notice. *See* EXHIBIT 38.

[86] Mr. Weisbrot was quoted in *Reuters* on Aug. 2, 2016, "'*Hilsee's letter smacks of full-blown conspiracy theories and is rife with self-aggrandizement and self-promotion. Hilsee's depiction of law firms threatening to blackball settlement administrators,' Weisbrot said, '**shows exactly how out of touch this … notice expert really is**'*" (emphasis added—ellipsis in original). Fortunately, *Reuters* replaced what was stated with an ellipsis. http://blogs.reuters.com/alison-frankel/2016/08/02/in-remington-trigger-defect-class-action-claims-rate-is-flashpoint/.

[87] Notwithstanding harsh statements in Weisbrot Dec. ECF No. 139-1, p. 3, "*…derived from a foregone era of media consumption—the only era during which Mr. Hilsee ever actually professionally planned or implemented notice campaigns,*" repeated in Garretson Dec. ECF No. 139-2, p. 6, I believe they respect that I am trained in ad agency media departments, that I designed, implemented, or analyzed 250 major notice campaigns between 1992-2017, including internationally. They must realize that my media knowledge includes a *proper use* of digital (I was an early adopter in 1997, and in dozens of campaigns since); after all, Mr. Weisbrot sought to pay me $50,000 to sign off on one of Angeion's plans in early Jan. 2015, which I declined. *See* EXHIBIT 39. Mr. Garretson also called me when beginning his partnership with Mr. Messina to discuss some cooperation, which I also declined.

EXHIBIT 1

Limited Two-Year Firearm Warranty

Who and what is covered by this warranty and for how long? Remington warrants to you, the original purchaser of a new firearm that, for two years from the date of purchase in the United States or Canada, your Remington firearm will be free from defects in material and workmanship.

What will Remington do if you discover a defect? If you make a claim within the warranty period following the instructions given in this warranty, we will, at our option, repair the defect(s), or replace the firearm at no cost to you. If we send you a new firearm, we will keep the defective one.

What must you do to make a claim under this warranty? First, when you purchase your firearm, you must complete and mail the warranty registration card to us (keep your sales receipt for proof of purchase date). Then, if you discover a defect, you must notify us or an authorized Remington warranty repair center before the end of the two-year period. You may either call or write Remington at:

Remington Arms Company, Inc.
Consumer Service Department
Post Office Box 700
Madison, NC 27025
1-800-243-9700

PLEASE DO NOT RETURN FIREARMS TO THE ABOVE ADDRESS. If we decide that it is necessary for you to return the firearm to the factory or an authorized warranty repair center, the owner must prepay freight. We will not accept COD shipments.

What is not covered by this warranty?
We will not cover damage of your firearm caused by:

- Failure to provide proper care and maintenance
- Accidents, abuse, or misuse
- Barrel obstruction
- Hand loaded, reloaded or improper ammunition
- Unauthorized adjustments, repairs or modifications
- Normal wear and tear

What is excluded from this warranty? Remington excludes and will not pay incidental or consequential damages under this warranty. By this we mean any loss, expense or damages other than to repair the defects in the firearm or replace the firearm. No implied warranties extend beyond the term of this written warranty. *PLEASE NOTE:* Some jurisdictions do not allow exclusion of incidental or consequential damages, or limitation on how long an implied warranty lasts, so the above exclusion and limitations may not apply to you. This warranty gives you specific legal rights and you may also have other rights.

PLEASE DETACH THIS PANEL BEFORE MAILING.

2684470933

Remington

Tell Us About Yourself

First Name | I. | Last Name

Address (street number) | (Street name) | Apartment Number

City | State | Zip Code | Phone Number - -

Email Address (Example: yourname@yourhost.com)

Date of Birth: / / (Month, Day, Year)

Your Gender: ☐ Male ☐ Female

What is your passion? Select all that apply.

☐ Big Game ☐ Small Game ☐ Waterfowl ☐ Upland ☐ Turkey ☐ Predator/Varmint ☐ Range & Recreation ☐ Tactical

How likely are you to recommend Remington firearms to friends or family?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

Not At All Likely (0) — Extremely Likely (10)

☐ Yes! I want to receive offers or communications that may interest me from other companies via e-mail, I understand this e-mail address may be shared with and/or combined with information from other sources

☐ Yes! I want to receive offers or communications from Remington via e-mail

Tell Us About Your Purchase

Serial Number

Date of Purchase / / (Month, Day, Year)

Purchase Price $, .00

Product Name/ Model

How many other Remington Firearms do you own? ☐ None ☐ 1-2 ☐ 3-4 ☐ More

Thank You! We appreciate your responses to this questionnaire. The information you choose to share with us will be used by us and our marketing partners to offer you product information and other communications that may interest you. If you prefer not be contacted about these special offers(direct mail), please check here:

PLEASE FOLD AND SEAL WITH TAPE BEFORE MAILING. DO NOT STAPLE

EXHIBIT 2

least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.

Parker v. Anderson, 667 F.2d 1204, 1210 n. 6 (5th Cir.), *cert. denied,* 459 U.S. 828 (1982).

22 In fact, the Court has received a letter from Thomas L. Millner, the president and chief operating officer of Remington Arms company, Inc. reiterating the company's support for the settlement. Although the company remains firm that the shotguns are safe when used in accordance with the rules of proper gun-handling, Remington recognizes that any litigation is filled with uncertainties and could take years before final resolution is reached and would consume personnel resources, generate costs, and would distract the company and its valued customers. Mr. Millner closes with a request that the settlement be approved.

23 Four of the seven class representatives attended the Fairness Hearing before the Court but did not voice any objection to the proposed settlement.

24 The notice was published in the following publications which have a total circulation of approximately 11 million. These publications were available to readers or subscribers between October 1 and late November, and the Notice encompassed a full page. The publications were as follows: AMERICAN HUNTER, AMERICAN RIFLEMAN, DUCKS UNLIMITED, FIELD & STREAM, GUN WORLD, GUNS, GUNS & AMMO, HANDLOADER, NORTH AMERICAN HUNTER, NSSF GUN CLUB ADVISORY NEWSLETTER, OUTDOOR LIFE, PETERSON'S HUNTING, RURAL SPORTSMAN, SHOOTING TIMES, SHOT BUSINESS, SHOTGUN **SPORTS**, SKEET SHOOTING REVIEW, **SPORTING** CLASSICS, **SPORTING** CLAYS, **SPORTS** AFIELD, THE NEW GUN WEEK, TRAP & FIELD, LAW & ORDER, LAW ENFORCEMENT TOOL, POLICE CHIEF, AND POLICE. in addition, this Notice appeared in the October 15, 1995, issues of two Sunday magazine inserts: *USA Weekend* and *Parade.* The circulation of these inserts are 22.5 million and 9 million, respectively. This Notice was also sent to 1,222 gun and shooting clubs and 69 firearms educators with the request the Notice be posted and/or placed in each organization's newsletter.

In addition to these Notices, Long Form Notices were sent to approximately 263,000 shotgun owners identified from product owner materials and customer lists maintained by Remington. These notices were also sent to approximately 985 agency and institutional owners of shotguns known to Remington. Approximately 18,850 of these notices were sent to class members who requested information as a result of having seen the Notices or had otherwise learned of the matter.

Although not required by the proposed settlement plan, Remington established, at its own expense, a separate choice on its phone menu for persons calling about the settlement. From October 16 through December 27, 1995, the operators of this option handled over 21,750 phone calls.

25 Defendants estimate it would take them 10 to 12 years to replace all of the modified barrels.

26 Dr. Levinson states in his affidavit that the 1140 modified steel contains more manganese sulfide inclusions than the standard grade. These manganese sulfide inclusions become elongated during the hot working of the steel before and during manufacture of the gun barrel. He further opines at pages 11 and 12 of his affidavit: [M]any Remington barrels made from AISI 1140 modified steel probably will not fail, from fatigue or from a higher-than-standard pressure shell. In most Remington shotguns, the inclusions are small enough and distributed well enough so that no crack initiation or crack growth occurs if manufacturing defects are not present which create one or more weak spots. Although the owner of a Remington's high sulfur 12–gauge shotgun barrel has no way of knowing how many sulfide inclusions are in the barrel, there are visual exams which may indicate barrels likely to fail. The visual exams are:

1. inspect end of chamber (breech end) and muzzle end for uneven wall thickness;
2. inspect outside the entire barrel for cracks or bulges;
3. inspect inside of chamber (the first 3 inches) with flashlight for cracks or flaws, especially in area underneath the rib weld;
4. inspect the fit of any choke for uneven edges inside the barrel which would be caused by improperly manufactured choke or non-concentric barrel.

If one or more of the above conditions is found, there is a significant increase in risk of failure. If cracks, bulges or uneven wall thickness are found in the chamber, failure at that location is more likely to occur. If a bulge, ill-fitting choke, cracks or uneven wall thickness is found at the muzzle end, the barrel is more likely to fail at its mid-point or near the muzzle end. *However, there is no guarantee that your barrel will not fail even if you do not find one or more of these conditions.* And, a shooter should always exercise caution so as not to cause or contribute to a failure by using improper ammunition or by obstructing the barrel.

EXHIBIT 3

RD-48 REV. 6-58

REMINGTON ARMS COMPANY, INC.

INTER-DEPARTMENTAL CORRESPONDENCE

Remington

RECEIVED
JAN 8 - 1979
R. A. PARTNOY

RBS

cc: E. F. Barrett
J. C. Williams
R. A. Partnoy

January 3, 1979

RECEIVED
JAN 9 1979
R. B. SPERLING

TO: PHILIP H. BURDETT
J. P. MC ANDREWS

FROM: R. W. STEELE

Reserve for Model 600 Center Fire Rifle Recall Program

We propose to establish a reserve of $1, 000, 000 at December 31, 1978 in order to cover the estimated liability incurred for the Model 600 center fire rifle recall program (i. e., the program to recall the Mohawk Model 600, as well as the guns with similar trigger assemblies, Remington Models 600 and 660 and the XP-100, which were manufactured before February 1975).

The program, which was initiated in late October at the time of the Coates settlement, is expected to continue through the balance of 1979 and carry over to some extent into succeeding years. To date a substantial amount of effort has been expended on establishing a network of 173 domestic gunsmiths, as well as selected gunsmiths in Canada, to install replacement trigger assemblies on guns being recalled. Telephone lines with toll-free numbers have been rented for gun owners to obtain information concerning return procedures and participating gunsmiths. Advertising concerning the recall has been placed in January issues of shooting magazines and plans have been developed for direct notification of gun owners. Further expenditures for advertising and consumer notification will be made as circumstances warrant.

Due to the large number of gunsmiths involved in the program, it has not yet been possible to obtain an accurate reading on the number of guns returned to date. However, we estimate this number to be 8, 000. The January advertising is expected to bring a substantial increase in gun returns and a substantial direct consumer notification effort to be made early in 1979 should further increase returns.

The total number of guns subject to recall is approximately 200, 000. We, of course, seek the return of all of these guns; but realistically our plans are geared to a total return of 50, 000 guns. The attached calculation of the reserve amount is based on a 50, 000 gun return. This is expected to result in a total recall expenditure of $1, 000, 000, as proposed for the reserve.

Based on the above estimates of 50, 000 guns and $1, 000, 000, the reserve would be liquidated in 1979 to firearms cost of goods sold at the rate of $20 per gun repaired.

R. W. Steele

RWS:mrp
Attach.

REM 0086572

LUN 0017906

REMINGTON ARMS COMPANY, INC

CALCULATION OF RESERVE FOR CENTER FIRE
RIFLE RECALL PROGRAM

Item	Amount
Number of guns - 50,000	
Cost of trigger assemblies ($5 each)	$ 250,000
Gunsmith cost ($8 average per gun)	400,000
Direct consumer notification	200,000
Recall advertising	40,000
Renting of telephone lines	
Atlanta	20,000
Connecticut	15,000
Ilion	5,000
Miscellaneous	70,000
Total	$1,000,000

WLF:mrp
1/3/79

REM 0086573

LUN 0017907

EXHIBIT 4

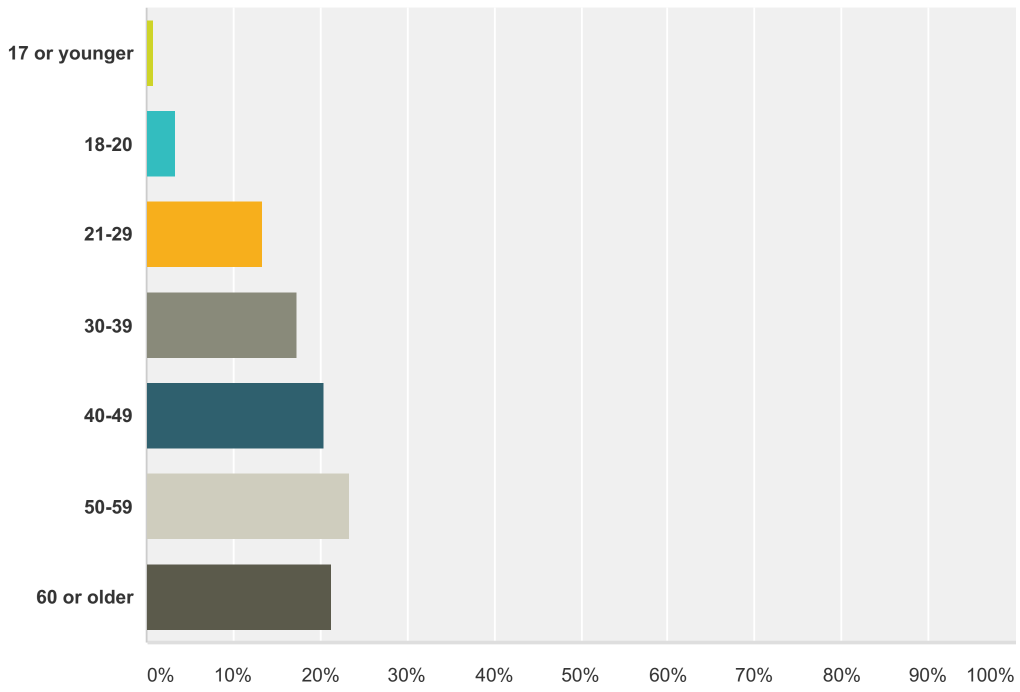
U.S. Adult Treatment of First-Class Mail, Email, Electronic Banner Ads and their Opinions on Class Action Notice Reliability and Notice Expectations

Summary of Responses - All Respondents - Detailed Analysis and Additional Tables Forthcoming

Source: The Hilsee Group LLC, Todd B. Hilsee, 215-486-2658, thilsee@hilseegroup.com; Platfiorm: SurveyMonkey; Confidence Interval: 95%; Margin of Error: 1.8%; Respondents: 3,187; Geography: 50 states; Survey Date: 12/9/16 - 12/13/16

Q1 What is your age?

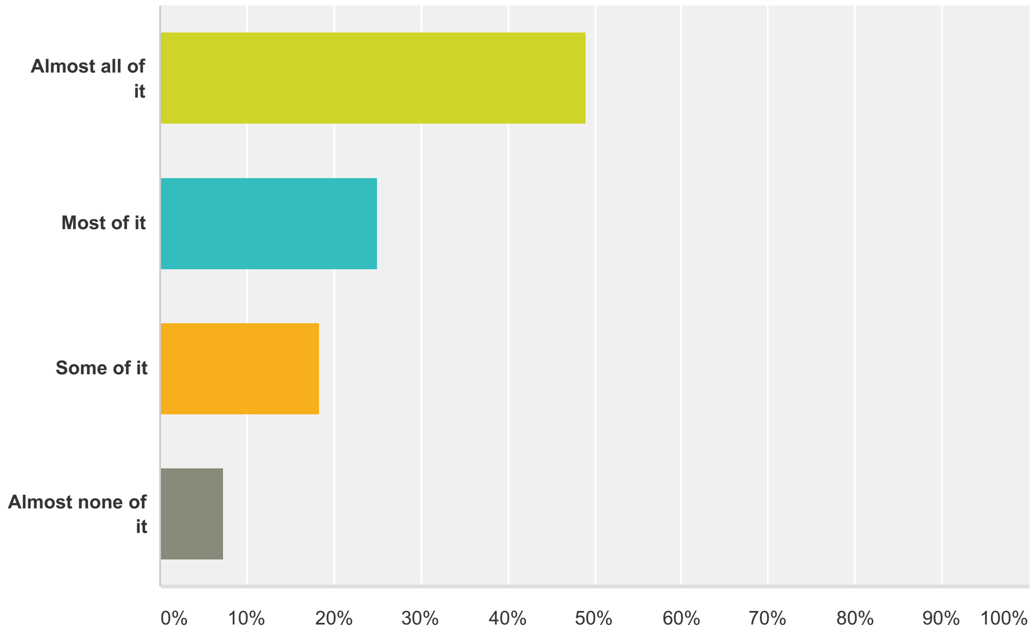
Answered: 3,187 Skipped: 0



Answer Choices	Responses	
17 or younger	**0.78%**	25
18-20	**3.33%**	106
21-29	**13.34%**	425
30-39	**17.32%**	552
40-49	**20.43%**	651
50-59	**23.44%**	747
60 or older	**21.37%**	681
Total		**3,187**

Q2 How much of the first-class mail that comes to you at home do you open?

Answered: 3,187   Skipped: 0

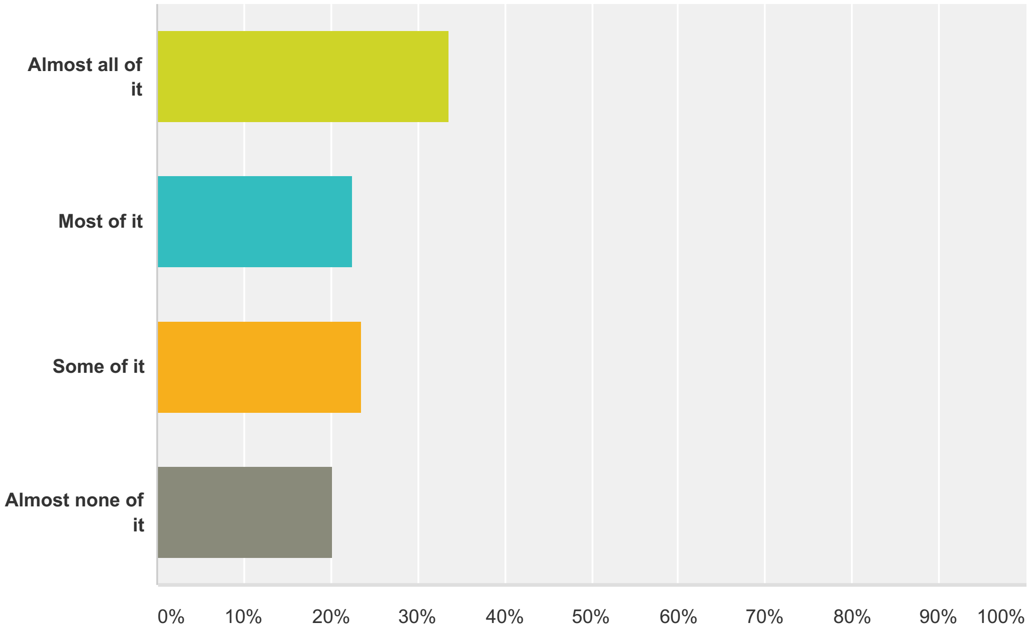


Almost all of it
Most of it
Some of it
Almost none of it
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Almost all of it	**49.14%**	1,566
Most of it	**25.04%**	798
Some of it	**18.42%**	587
Almost none of it	**7.41%**	236
Total		**3,187**

Q3 How much of the first-class mail from senders who are NOT family, friends, or personally known to you do you open?

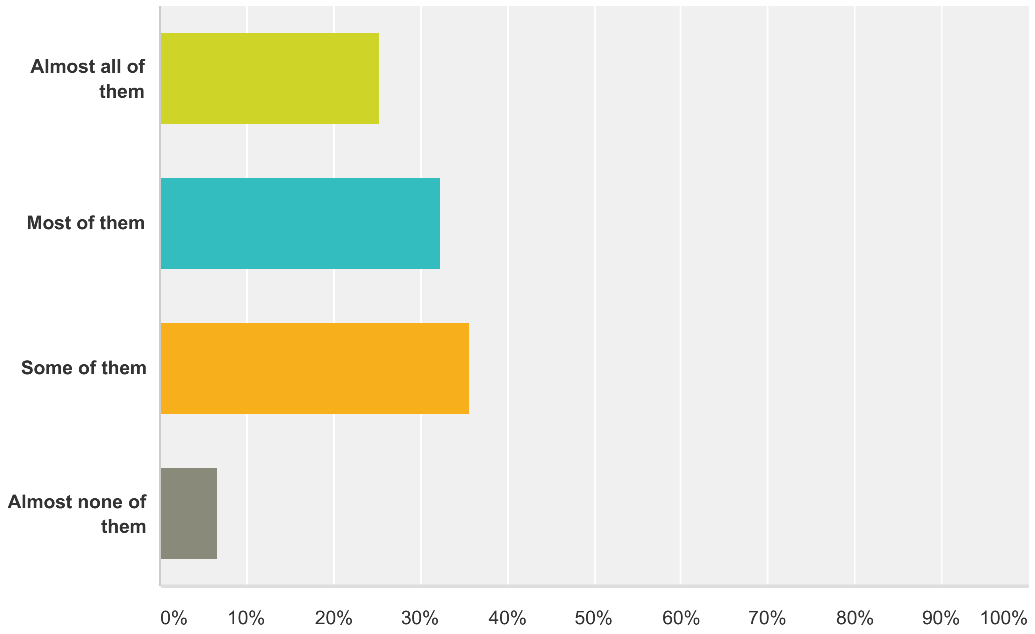
Answered: 3,187 Skipped: 0


Almost all of it
Most of it
Some of it
Almost none of it
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Almost all of it	**33.61%**	1,071
Most of it	**22.62%**	721
Some of it	**23.53%**	750
Almost none of it	**20.24%**	645
Total		**3,187**

Q4 How many of the emails that are sent to your personal email account do you open?

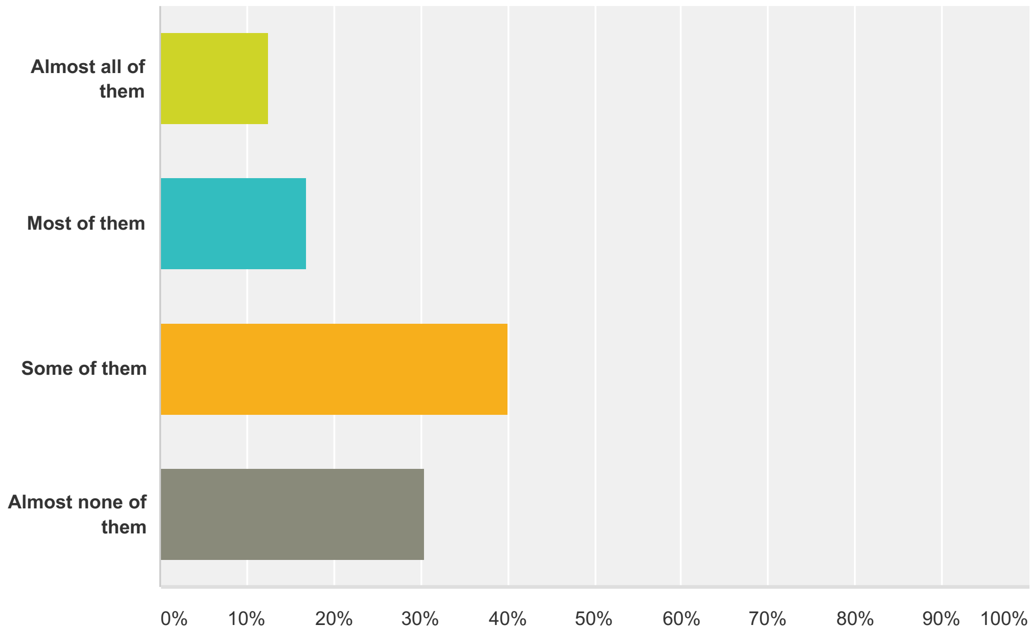
Answered: 3,187   Skipped: 0


Almost all of them
Most of them
Some of them
Almost none of them
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Almost all of them	**25.32%**	807
Most of them	**32.35%**	1,031
Some of them	**35.64%**	1,136
Almost none of them	**6.68%**	213
Total		**3,187**

Q5 How many of the emails from senders who are NOT family, friends, or personally known to you do you open?

Answered: 3,187   Skipped: 0

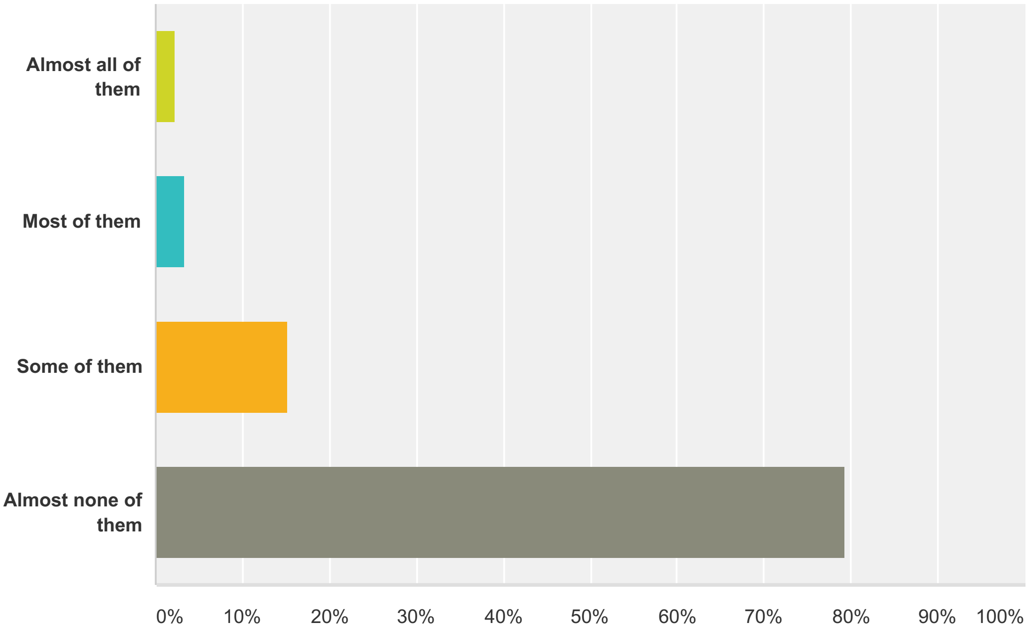


Almost all of them
Most of them
Some of them
Almost none of them
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Almost all of them	**12.61%**	402
Most of them	**16.88%**	538
Some of them	**40.04%**	1,276
Almost none of them	**30.47%**	971
Total		**3,187**

Q6 As you use your computer, internet browser, or mobile device, how many of the electronic banner ads do you click on?

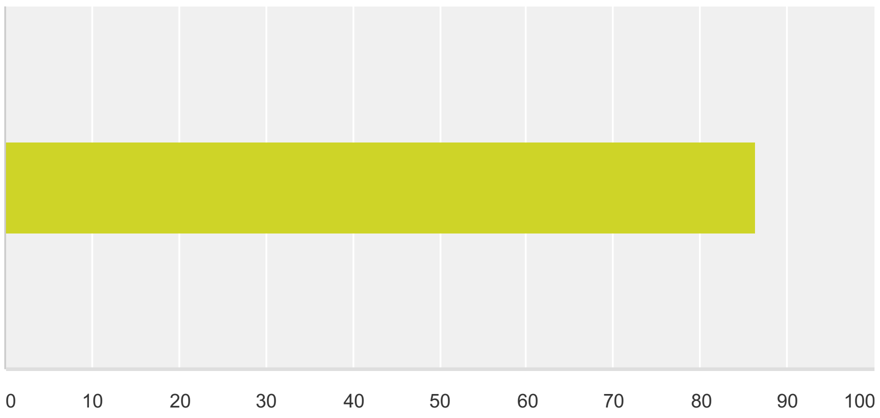
Answered: 3,187 Skipped: 0


Almost all of them
Most of them
Some of them
Almost none of them
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Almost all of them	**2.26%**	72
Most of them	**3.33%**	106
Some of them	**15.19%**	484
Almost none of them	**79.23%**	2,525
Total		**3,187**

Q7 When there is a class action lawsuit, the Court must notify the people affected (e.g., those who purchased a certain product). The notice will disclose an alleged problem with the product such as a safety-related defect, or a problem with how the product or a service was marketed. The notice may offer benefits, such as money, or repair of the product. The notice describes your legal rights including: (1) Your right to receive the benefits, (2) Your right to sue the company on your own, and (3) Your right to appear or object in Court. You lose these legal rights if you do not respond to the notice.Move the slider to reflect your level of understanding:

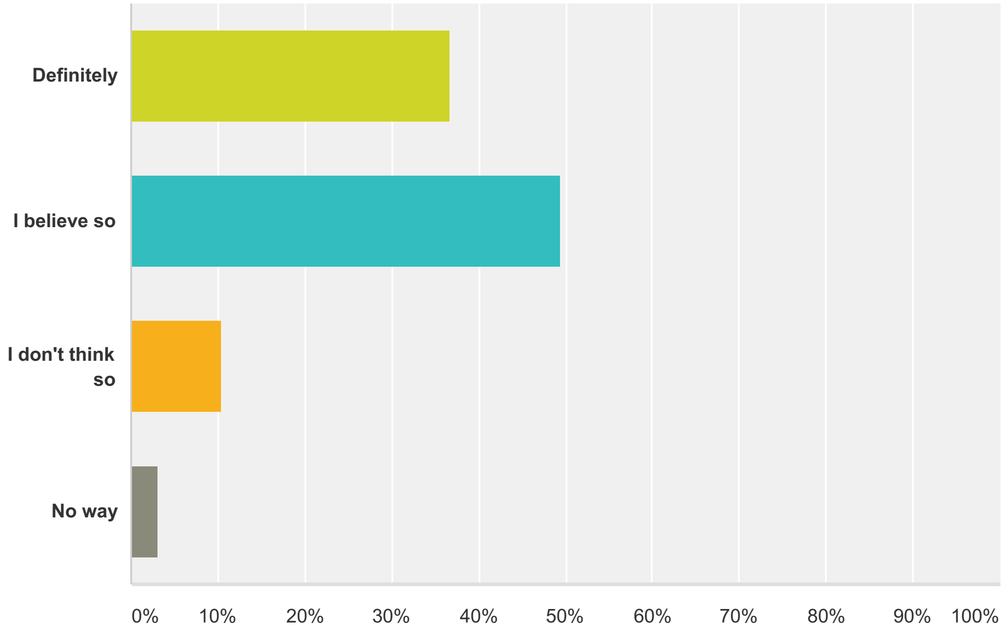
Answered: 3,187 Skipped: 0



Answer Choices	Average Number	Total Number	Responses
	86	275,585	3,187
Total Respondents: 3,187			

Q8 Would a notice sent by first-class mail be a reliable way of informing you of your legal rights, if the Court can identify your home address?

Answered: 3,187   Skipped: 0

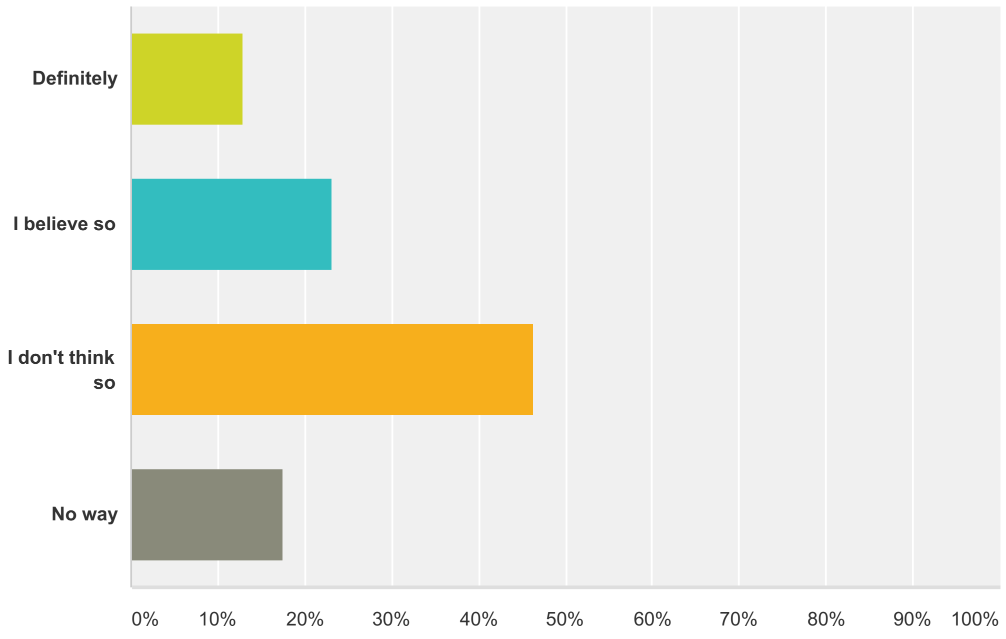


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Definitely	**36.81%**	1,173
I believe so	**49.58%**	1,580
I don't think so	**10.39%**	331
No way	**3.23%**	103
Total		**3,187**

Q9 Would an email be a more reliable notice than a first-class mailing, when the Court can identify both your home address and your email address?

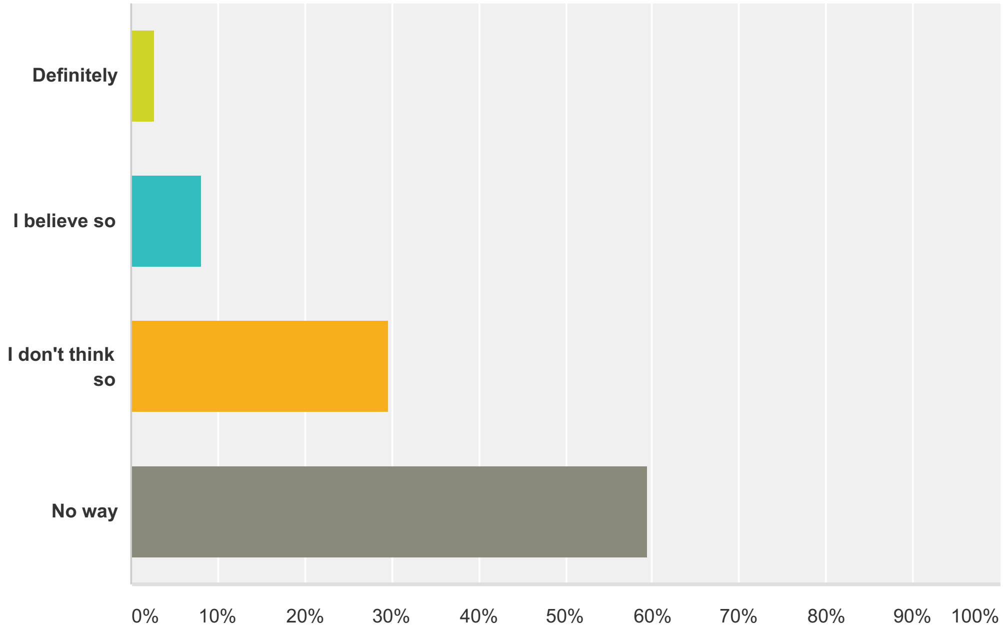
Answered: 3,174   Skipped: 13


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Definitely	**12.95%**	411
I believe so	**23.16%**	735
I don't think so	**46.38%**	1,472
No way	**17.52%**	556
Total		**3,174**

Q10 Would a notice by way of an internet banner ad be more reliable than either a first-class mailing or an email, when both of those addresses can be identified?

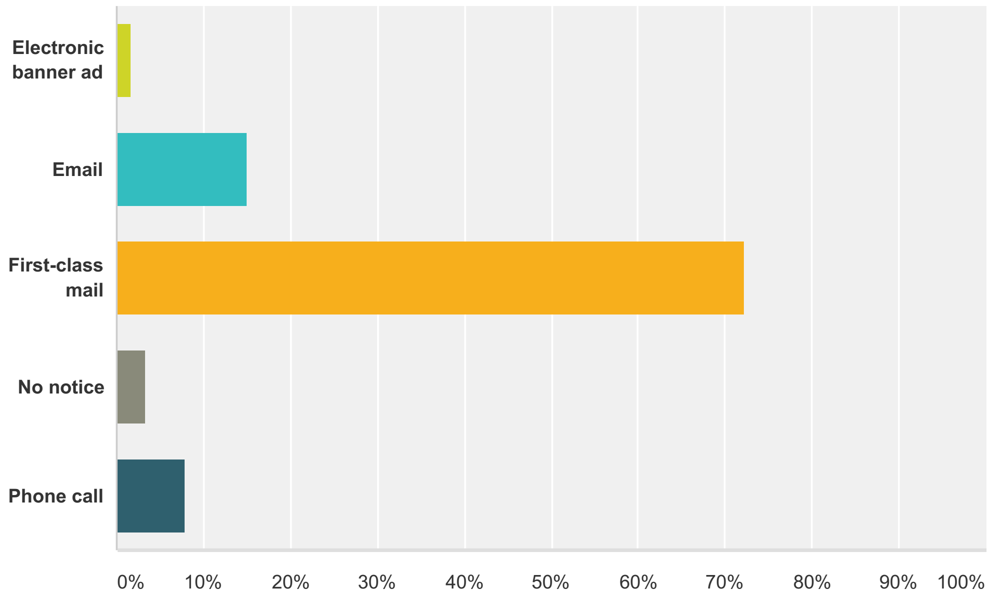
Answered: 3,180 Skipped: 7


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Definitely	**2.77%**	88
I believe so	**8.08%**	257
I don't think so	**29.65%**	943
No way	**59.50%**	1,892
Total		**3,180**

Q11 If a class action involved a safety-related defect in a product you purchased, which would you expect to receive:

Answered: 3,187   Skipped: 0

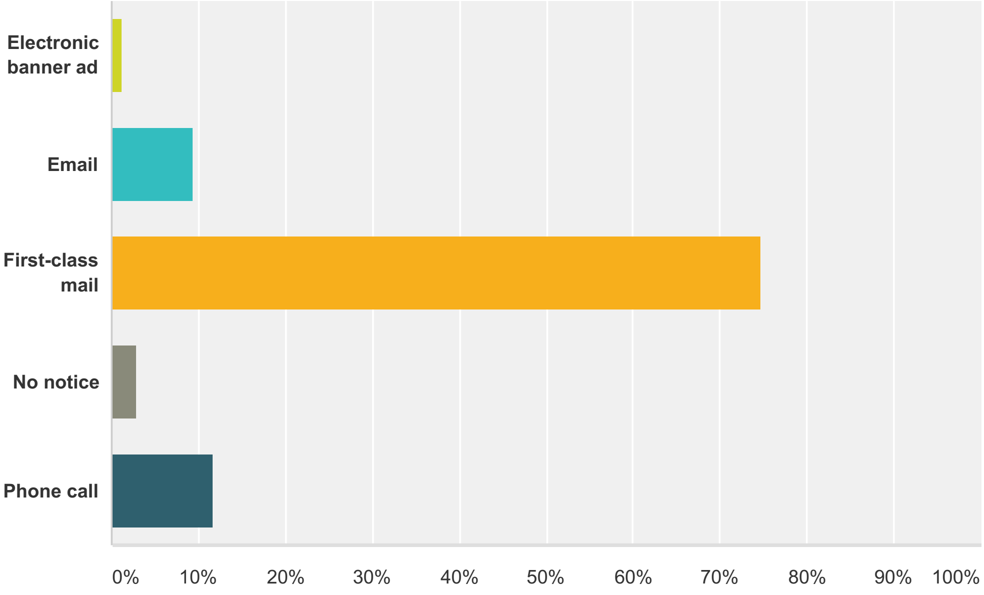


Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Electronic banner ad	**1.69%**	54
Email	**14.97%**	477
First-class mail	**72.23%**	2,302
No notice	**3.26%**	104
Phone call	**7.84%**	250
Total		**3,187**

Q12 If a class action that affected you involved $1,000 for each person, which would you expect to receive:

Answered: 3,187 Skipped: 0

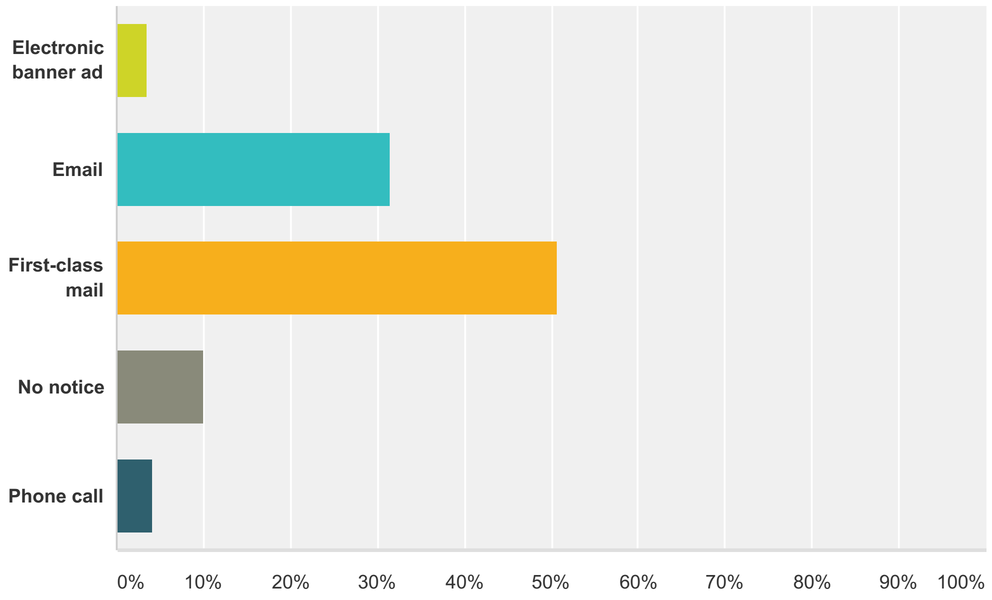


Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Electronic banner ad	**1.19%**	38
Email	**9.38%**	299
First-class mail	**74.80%**	2,384
No notice	**2.95%**	94
Phone call	**11.67%**	372
Total		**3,187**

Q13 If a class action that affected you involved $5 for each person, which would you expect to receive:

Answered: 3,187 Skipped: 0

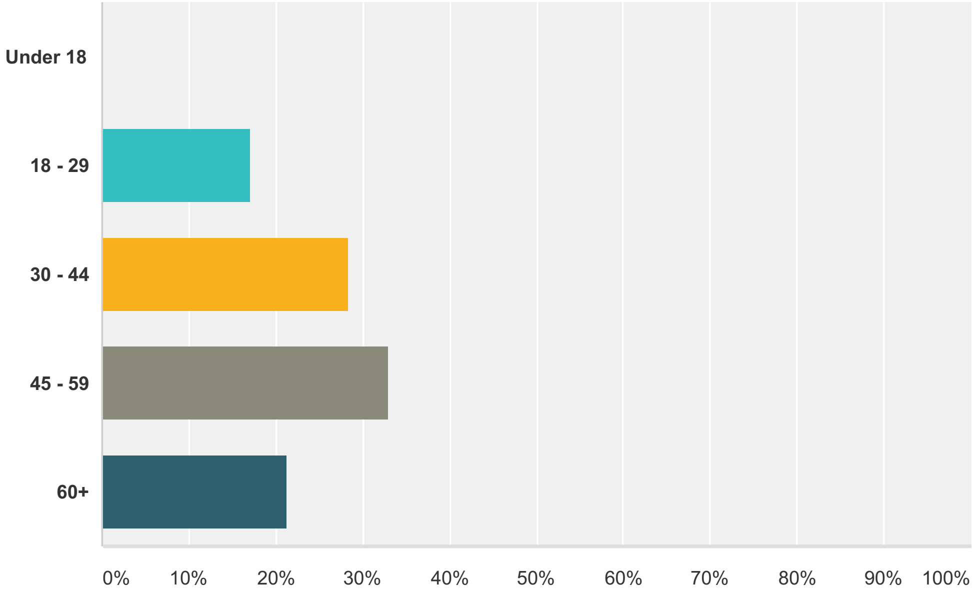


Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Electronic banner ad	**3.48%**	111
Email	**31.60%**	1,007
First-class mail	**50.74%**	1,617
No notice	**10.10%**	322
Phone call	**4.08%**	130
Total		**3,187**

Q14 What is your age?

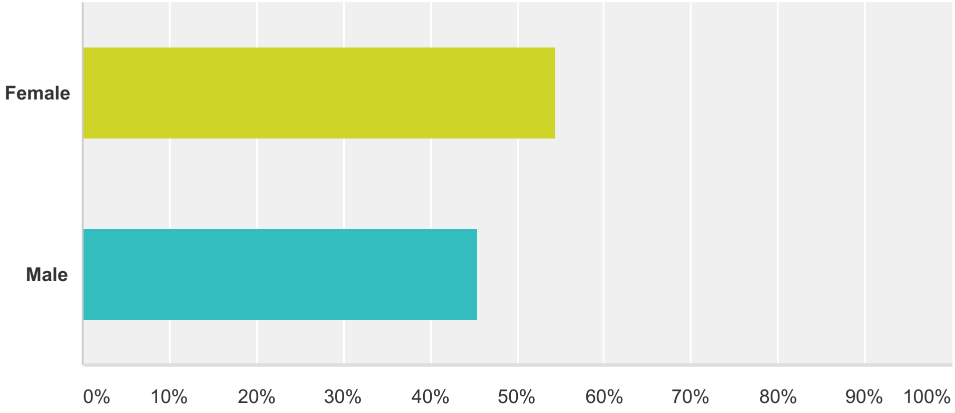
Answered: 3,184 Skipped: 3


Under 18
18 - 29
30 - 44
45 - 59
60+
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Under 18	**0.00%**	0
18 - 29	**17.15%**	546
30 - 44	**28.49%**	907
45 - 59	**32.98%**	1,050
60+	**21.39%**	681
Total		**3,184**

Q15 What is your gender?

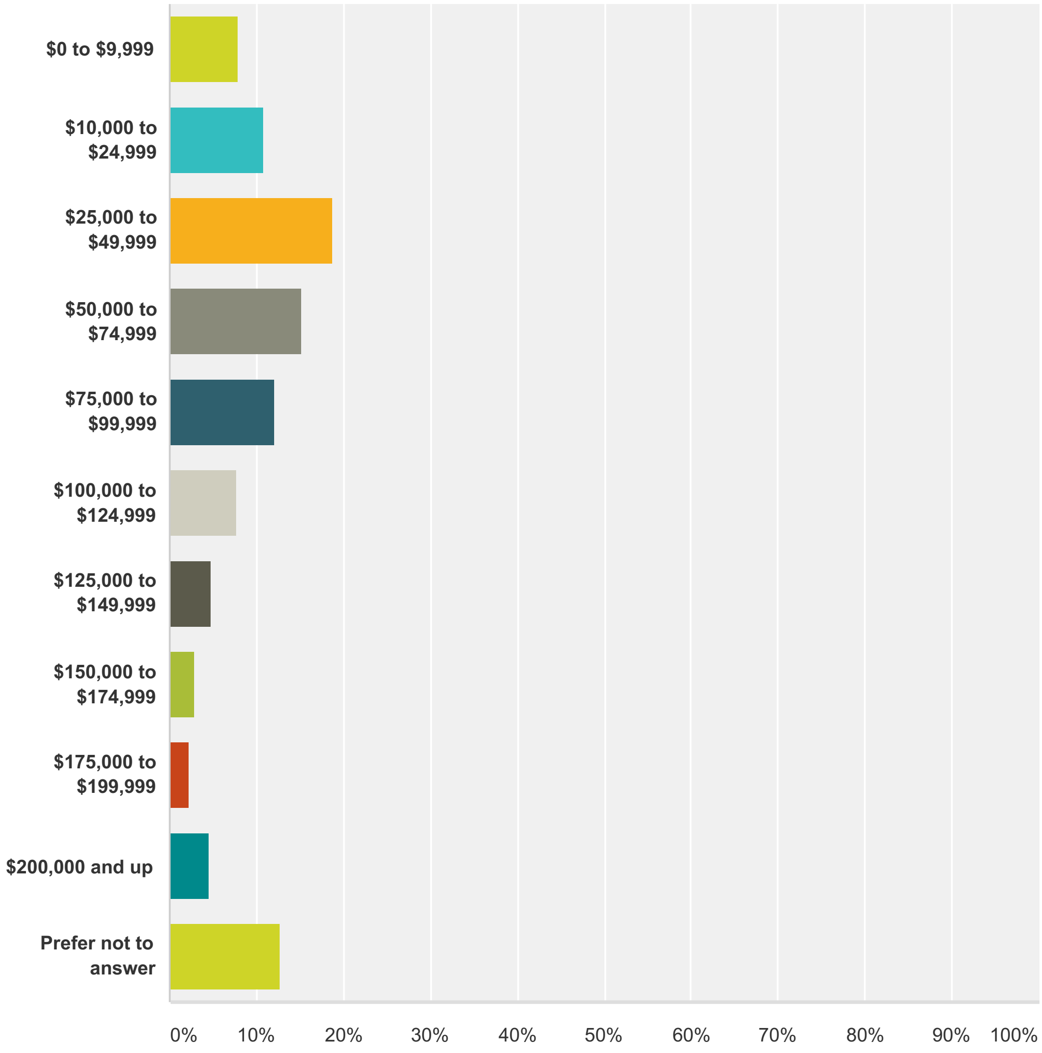
Answered: 3,184 Skipped: 3


Female
Male
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
Female	**54.59%**	1,738
Male	**45.41%**	1,446
Total		**3,184**

Q16 How much total combined money did all members of your HOUSEHOLD earn last year?

Answered: 3,180 Skipped: 7

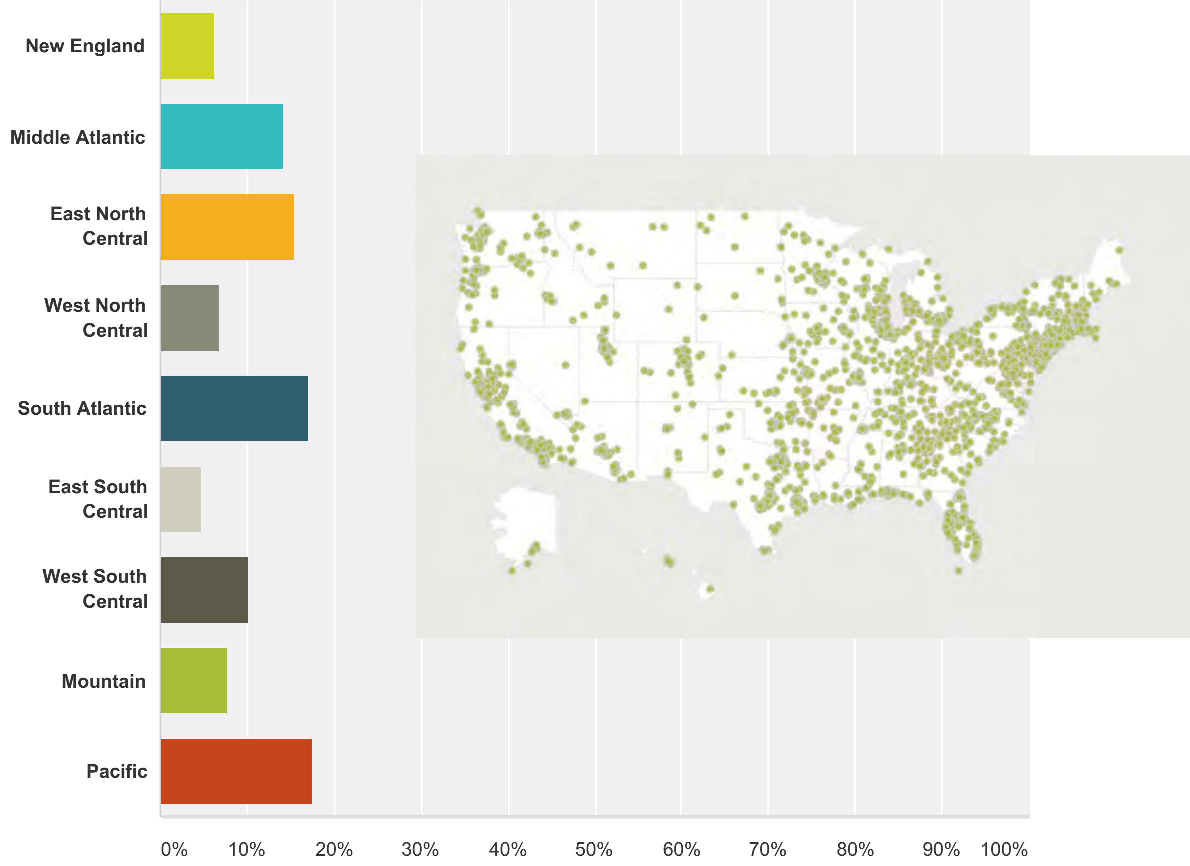


$0 to $9,999
$10,000 to $24,999
$25,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 to $124,999
$125,000 to $149,999
$150,000 to $174,999
$175,000 to $199,999
$200,000 and up
Prefer not to answer
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

Answer Choices	Responses	
$0 to $9,999	**7.92%**	252
$10,000 to $24,999	**10.79%**	343
$25,000 to $49,999	**18.87%**	600
$50,000 to $74,999	**15.28%**	486
$75,000 to $99,999	**12.04%**	383
$100,000 to $124,999	**7.67%**	244
$125,000 to $149,999	**4.78%**	152
$150,000 to $174,999	**2.92%**	93

Q17 US Region

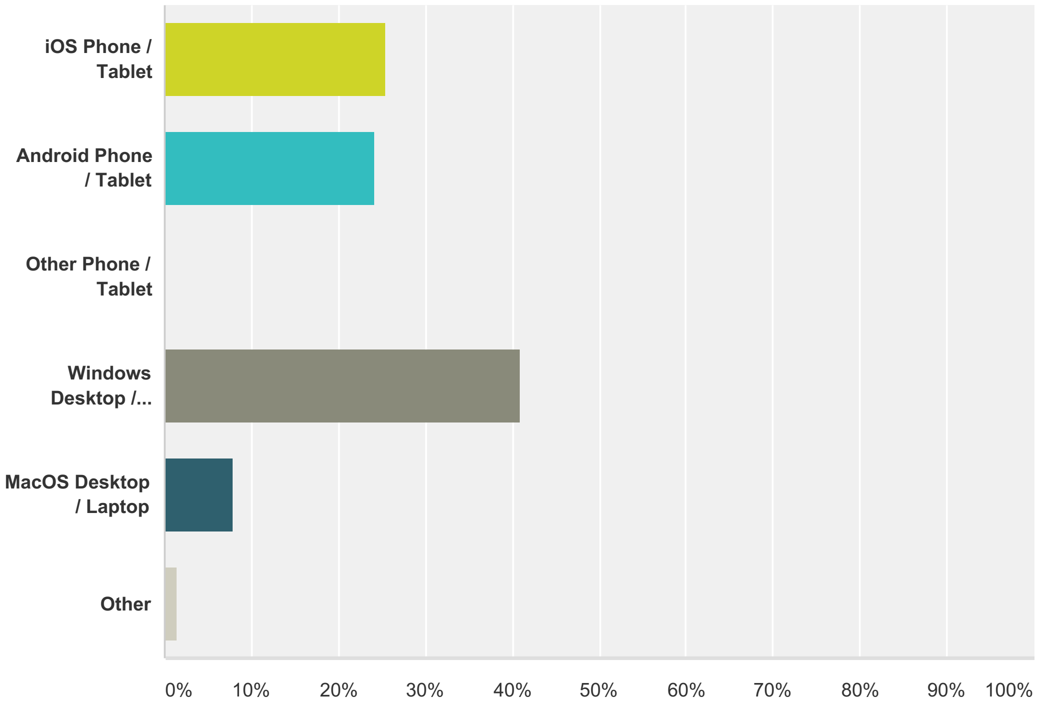
Answered: 3,130 Skipped: 57


New England
Middle Atlantic
East North Central
West North Central
South Atlantic
East South Central
West South Central
Mountain
Pacific
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
New England	**6.20%**	194
Middle Atlantic	**14.25%**	446
East North Central	**15.43%**	483
West North Central	**6.90%**	216
South Atlantic	**17.03%**	533
East South Central	**4.86%**	152
West South Central	**10.16%**	318
Mountain	**7.64%**	239
Pacific	**17.54%**	549
Total		**3,130**

Q18 Device Types

Answered: 3,184   Skipped: 3



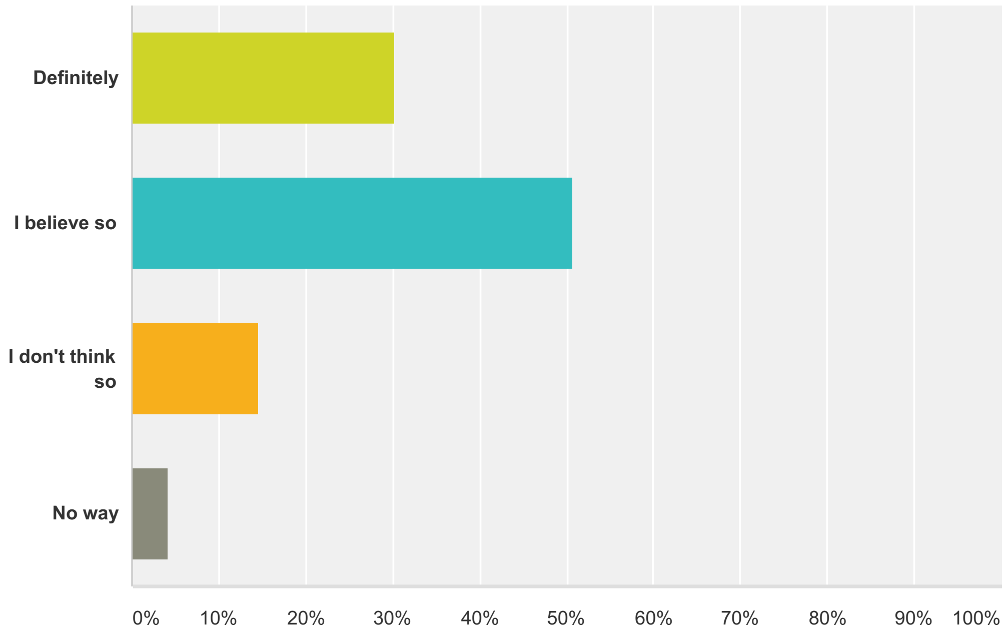
iOS Phone / Tablet
Android Phone / Tablet
Other Phone / Tablet
Windows Desktop /...
MacOS Desktop / Laptop
Other
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Answer Choices	Responses	
iOS Phone / Tablet	**25.41%**	809
Android Phone / Tablet	**24.18%**	770
Other Phone / Tablet	**0.00%**	0
Windows Desktop / Laptop	**40.89%**	1,302
MacOS Desktop / Laptop	**8.01%**	255
Other	**1.51%**	48
Total		**3,184**

Among Millennial Adults 18-29

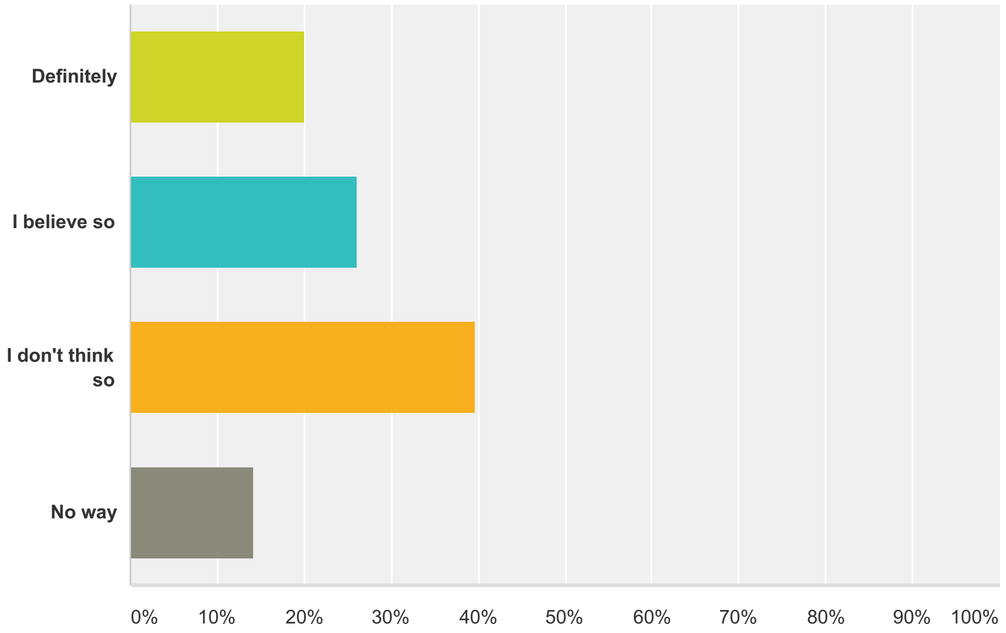
Q8 Would a notice sent by first-class mail be a reliable way of informing you of your legal rights, if the Court can identify your home address?

Answered: 518   Skipped: 0


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Q9 Would an email be a more reliable notice than a first-class mailing, when the Court can identify both your home address and your email address?

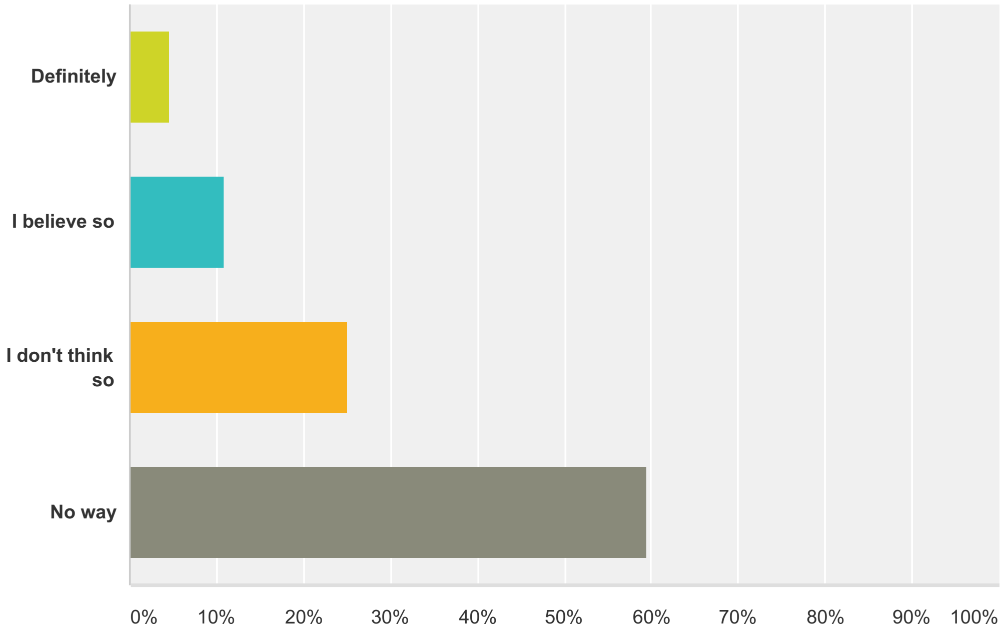
Answered: 518   Skipped: 0


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Among Millennial Adults 18-29

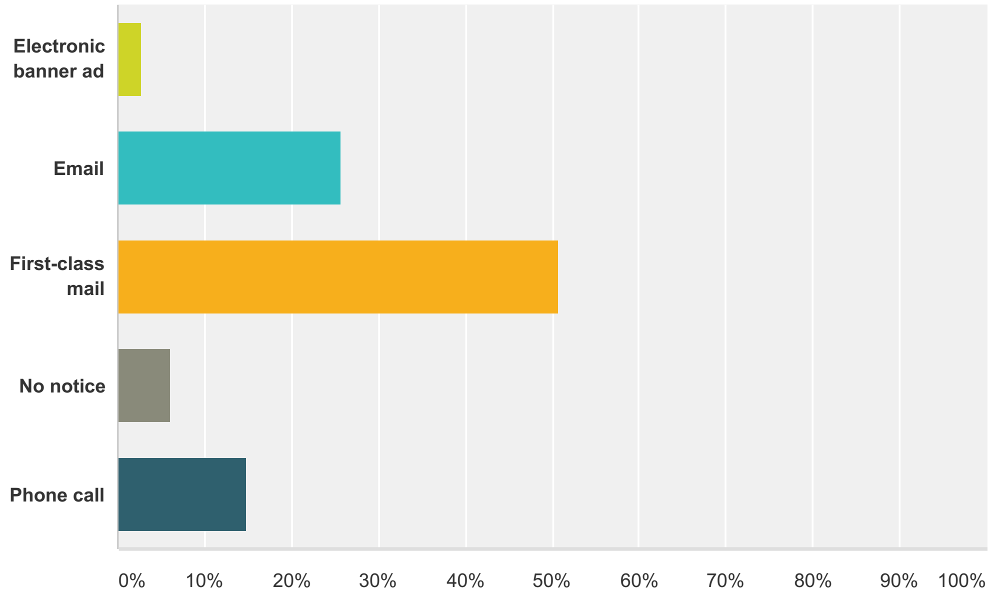
Q10 Would a notice by way of an internet banner ad be more reliable than either a first-class mailing or an email, when both of those addresses can be identified?

Answered: 517 Skipped: 1


Definitely
I believe so
I don't think so
No way
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Q11 If a class action involved a safety-related defect in a product you purchased, which would you expect to receive:

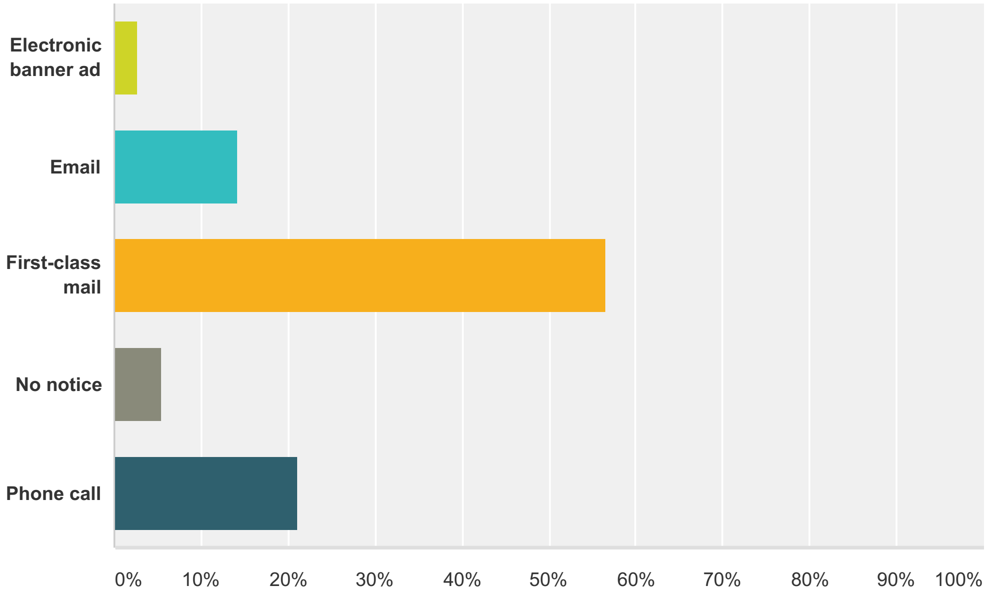
Answered: 518 Skipped: 0


Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Among Millennial Adults 18-29

Q12 If a class action that affected you involved $1,000 for each person, which would you expect to receive:

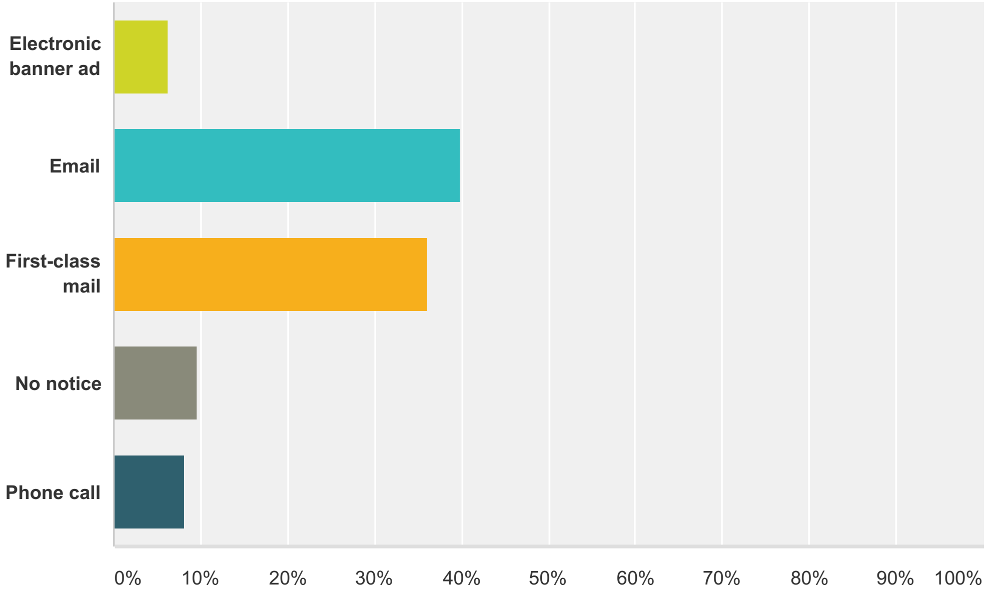
Answered: 518 Skipped: 0



Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Q13 If a class action that affected you involved $5 for each person, which would you expect to receive:

Answered: 518 Skipped: 0



Electronic banner ad
Email
First-class mail
No notice
Phone call
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

MAY 21 1997

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY CLERK

LEONEL GARZA, JR., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. SA-93-CA-1082
	§	
SPORTING GOODS PROPERTIES, INC.,	§	
formerly known as Remington	§	
Arms Company, Inc., ET AL.,	§	
	§	
Defendants.	§	

COURT'S ADVISORY TO ALL GARZA SETTLEMENT CLASS MEMBERS

Numerous class members have contacted the Court expressing concern about the length of time between the filing of their claims and their receipt of checks from the $17.125 million settlement fund established in the case. The Court wishes to assure class members that it has been monitoring the claim valuation process and is well aware of the difficulties encountered in validating the claim forms which, the Court finds, resulted in unavoidable and uncontemplated delay.

A total of 496,451 claim forms were received representing 820,708 shotguns. The claims process has established that 477,376 forms were timely filed and listed at least one shotgun eligible for the settlement, for a total of 750,372 eligible shotguns. On May 12, 1997, the Court approved the list of claims validated for payment. The Court has sealed that list to protect the privacy of all class members.

Considering the enormous response, errors and delays were inevitable. Thousands of class members filed incomplete and/or inaccurate claim forms, and more than 65,000 claimants had to be contacted for additional information, creating significant delay. The Court finds that the additional time taken to obtain the missing or additional information needed to process and validate the claims was warranted.

The Court is also mindful that the delay of several months in processing claims is far less than class members would have faced had this action not settled. Because of this Court's enormous criminal docket and several hundred other civil cases, resolution of this dispute through trial and appellate litigation, as opposed to settlement, may have resolved the case in about the year 2005.

The Court's primary responsibility has been and is to bring this matter to closure properly and within the bounds of the rule of law. Every effort has been made to do so. In February 1996, this Court evaluated all aspects of the compromise settlement and found the settlement "fair, adequate and reasonable." That assessment still holds true, particularly compared to the alternative of many more years of litigation, in which class members may or may not have prevailed.

SIGNED and ENTERED this 21st day of May, 1997.

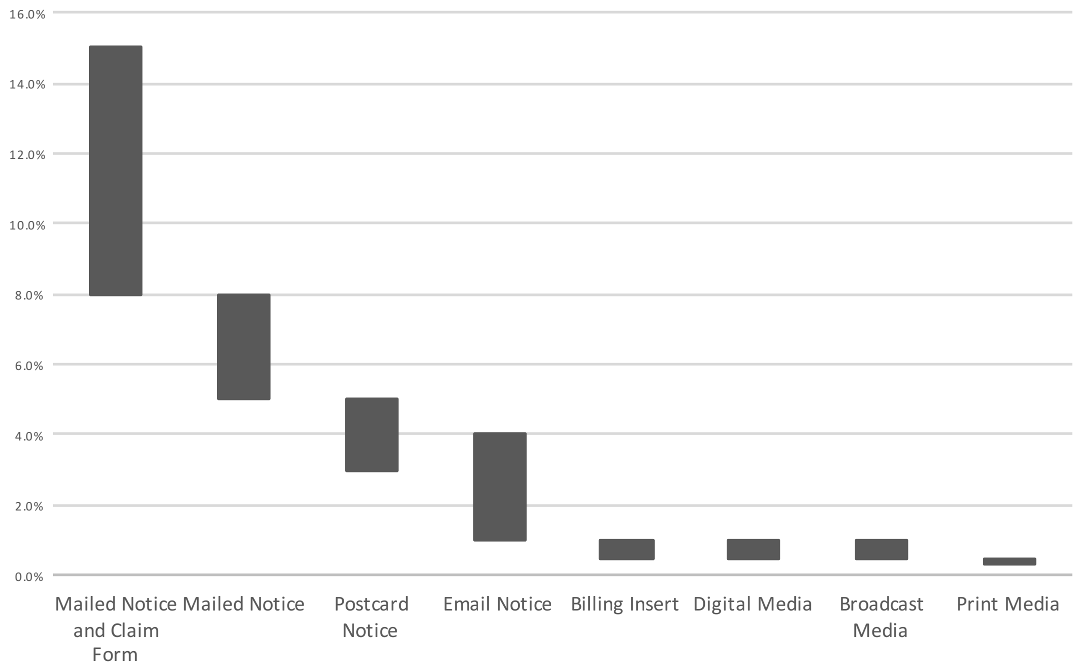
FRED BIERY
UNITED STATES DISTRICT JUDGE

151

EXHIBIT 6

Participation Rates and Types of Notice

Everything Else Being Equal…



16.0%
14.0%
12.0%
10.0%
8.0%
6.0%
4.0%
2.0%
0.0%
Mailed Notice and Claim Form
Mailed Notice
Postcard Notice
Email Notice
Billing Insert
Digital Media
Broadcast Media
Print Media

Key Takeaways

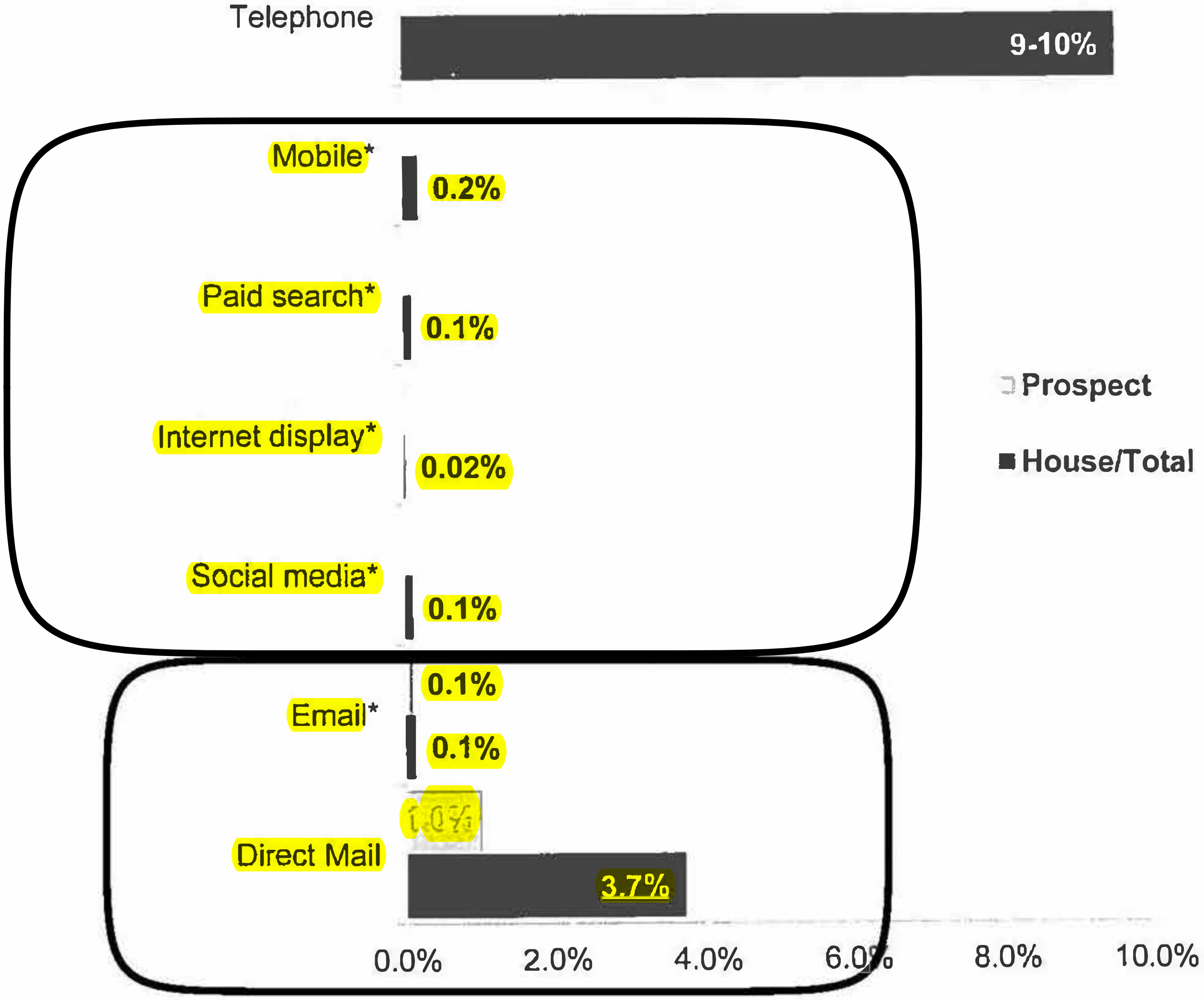
Participation Rates are Generalizations

Known Class Members: Direct Notice With a Claim Form is more expensive than the alternatives, but generally has higher class member participation.

Presented to Federal Trade Commission, March 2016

Prepared by Analytics LLC

Figure 3: Response by Selected Media


Telephone
9-10%
Mobile*
0.2%
Paid search*
0.1%
Internet display*
0.02%
Social media*
0.1%
Email*
0.1%
0.1%
Direct Mail
3.7%
0.0%
2.0%
4.0%
6.0%
8.0%
10.0%
Prospect
House/Total

2015 Response Rate Benchmark Study, DMA & Demand Metric, March 2015

Note: Response rate for telephone was graphed using the midpoint of the range.

**CTR x Conversion rate*

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EXHIBIT 7

Ensure high-quality, cost-effective notice and settlement administration

Class Action Settlement Administration For Dummies, KCC Special Edition, is packed with details about the administration process and how your administrator makes the process run smoothly. This book provides you with an overview of class action settlement administration and legal notification. You'll learn about the mechanics of settlement administration, how to choose a claims administrator, what makes a notice program effective, and how to keep administration costs in line, among other topics.

- ***Avoid pitfalls* — *understand and avoid key mistakes in a settlement***
- ***Reduce costs* — *find out how working with experts saves time and money***
- ***Comply with court requirements* — *work with experienced professionals to ensure court approval***

FOR DUMMIES
A Wiley Brand

Open the book and find:

- How to consult with a claims administrator to make the process run smoothly
- The mechanics of settlement administration
- What makes a notice program effective
- How to keep administration costs in line

Making Everything Easier!™

Go to Dummies.com®
for videos, step-by-step examples, how-to articles, or to shop!

ISBN: 978-1-118-55696-2
Not for resale

Compliments of KCC

KCC Special Edition

Class Action Settlement Administration

FOR DUMMIES®
A Wiley Brand

Learn to:
- **Avoid pitfalls**
- **Reduce costs**
- **Comply with court requirements**

KCC Class Action Services

KCC creates a higher standard for its industry by focusing on clients' needs from the perspective of professionals. KCC provides professional-level client service, industry expertise, and innovative technology solutions to support clients' critical business processes and transactions. As a result, KCC has earned national and industry recognition for its services, leadership, innovative business model, and company growth.

With experience administering over 1,500 settlements, KCC's team knows first-hand the intricacies of class action settlement administration. Its domestic infrastructure includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. In addition, KCC's disbursement services team distributes more than $500 billion annually.

This book is proudly written by the KCC Class Action Services Team:

- Dee Christopher
- Robert P. DeWitte
- Drake Foster
- Gina Intrepido-Bowden
- Patrick Ivie
- Patrick Passarella
- Carla Peak
- Nancy Timpanaro
- Steven Weisbrot

To learn more about KCC Class Action Services or to request additional copies of this book, call (866) 381-9100 or e-mail classaction@kccllc.com. You can also call Patrick Ivie, Executive Vice President KCC Class Action Services, at (310) 776-7385 or e-mail at pivie@kccllc.com.

Class Action Settlement Administration FOR DUMMIES

A Wiley Brand

KCC Special Edition

by The KCC Class Action Services Team

FOR DUMMIES
A Wiley Brand

E-mail notices tend to generate a lower claims rate than direct-mail notices. But not all direct-mail notices are created equal — many types of notice and claim form designs exist, and they all tend to have different claims rates. The claims rates of the varying types of notice and claim form designs tend to be most impacted by their distribution methods, their ability to be easily understood by recipients, and the ease with which class members can file the necessary forms and take any required action.

The following are the most common types of e-mail and direct-mail notices and claim forms. They're listed in order of least to most likely to increase the number of claims filed in a settlement.

- E-mail notice
- Single postcard summary notice
- Full notice and claim form
- Full notice and claim form with return envelope
- Full notice and claim form with postage-paid return envelope
- Double postcard notice with tear-away claim form
- Double postcard notice and postage-prepaid tear-away claim form

When thinking about the potential claims rate, be sure to think about factors other than just the amount of the monetary award. Your claims administrator should review the settlement details and identify the major factors that impact the claims rate in your settlement.

For example, in an employment context, consider whether a particular class member is a current, past, or seasonal employee. In the consumer context, consider whether the product was a luxury item with a high price tag or whether the lawsuit involved a high-profile product, such as a common, everyday food item. Was there a safety hazard? Was this a well-publicized settlement?

Calculating Claims Rates

While claims rates are an important factor in settlement planning, be sure to focus not only on the individuals making the claims but also on the percentage of the class fund that those claims represent. It'll be pretty straightforward to allocate the class member awards if the settlement is set up on a per capita basis with a set value per claimant or a simple pro rata share with a value that varies in proportion to an easily calculated factor.

The calculation process becomes a lot more complex when the allocations vary based on considerations such as the length of time a customer received a service or the amount of time an employee worked in a particular position. Talk to your claims administrator about the complexity of your settlement, and be sure you understand what the class member allocations are based on.

EXHIBIT 8

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

JOSHUA D. POERTNER, individually and on behalf of all others similarly situated, Plaintiff, v. THE GILLETTE COMPANY, and THE PROCTER & GAMBLE COMPANY, Defendants.	Case No. 6:12-CV-00803-GAP-DAB Dept.: 5A Judge: Hon. Gregory A. Presnell

DECLARATION OF DEBORAH MCCOMB RE SETTLEMENT CLAIMS

I, Deborah McComb, declare and state as follows:

1. I am a Senior Consultant at Kurtzman Carson Consultants LLC ("KCC"), located at 75 Rowland Way, Suite 250, Novato, California. As a Senior Consultant at KCC, my responsibilities include overseeing and implementing legal notice campaigns in order to provide notice to class members of class action settlements, as well as administration and handling of claims and exclusions in class action settlements. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. KCC is the court appointed settlement administrator of the class settlement in the above-captioned matter (the “Settlement”). I am one of the individuals at KCC responsible for KCC’s work in implementing the notice to class members of the Settlement, and administering and handling claims by

potential class members.

3. The purpose of this declaration is to provide the Parties and the Court with a summary of the number of claims submitted by Class Members for the Settlement in this matter..

4. As discussed in the Notice Plan filed with the Court on October 25, 2013 as an exhibit to the Preliminary Approval Motion (Doc. 113-8), the class of purchasers of the Duracell Ultra batteries that are the subject of this case is estimated to be approximately 7,260,000 members. As also discussed in the Notice Plan and in prior declarations filed in connection with the Settlement in this matter, due to the consumer nature of this case, the identity of class members and their contact information is unknown and the class members therefore had to be reached through a consumer media campaign involving publication notice in national magazines, newspapers, internet banners, a settlement website and automated settlement telephone system. The Notice Plan and media campaign are discussed in detail in the previously filed declaration of Gina Intrepido-Bowden on Adequacy of Proposed Settlement Notice Program (Doc. 114-4) and in my previously filed declaration Re Settlement Administrator's Notice Procedures and Compliance with Court Approved Notice Plan (Doc. 122), as well as in Ms. Intrepido-Bowden's and my additional declarations filed concurrently herewith.

5. To project claims rates in a given case, we review other cases that are similar in scope and the method of dissemination. Having administered hundreds of class settlements, it is KCC's experience that consumer class action settlements with little or no direct mail notice will almost always have a claims rate of less than one percent (1%). For example, KCC did an analysis six months ago of all consumer class action settlements that KCC administered where the notice provided to class members relied entirely on media notice rather than direct mail notice. These settlements included products such as toothpaste, children's clothing, heating pads, gift cards, an over-the-counter medication, a snack food, a weight loss supplement and sunglasses. The claims rate in these cases ranged between .002% and 9.378%, with a median rate of .023%. In my years of experience in administering class settlements in similar consumer cases, these settlements and the claims rates in these settlements are representative or typical of other class action settlements in consumer cases which I have been involved in administering.

6. As of the date of this declaration, KCC has received 55,346 claims by class members in

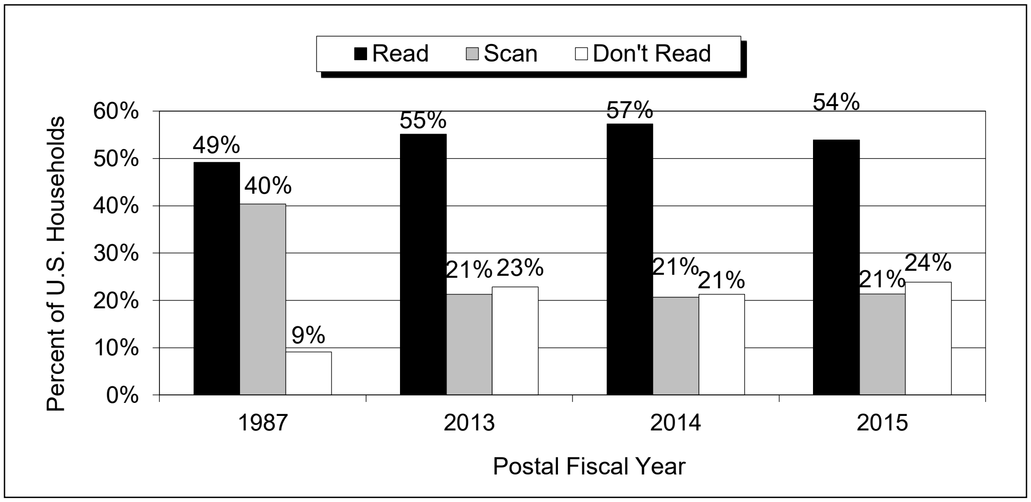
this matter, which claims represent 114,950 packages of batteries. In accordance with the "Class Action Settlement Agreement" in this matter and based upon three dollars ($3.00) per package claimed, the total disbursement to Class Members submitting claims would be $344,850.00, assuming all of the aforementioned claims are valid. KCC is currently completing the processing and validation of such claims. Based upon the number of claims submitted in this case, this equates to approximately a 0.76% claim filing rate. This claim filing rate is above average when compared to class settlements in other recent similar consumer class action cases, as discussed in the previous paragraph.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 21at day of April 2014 at Novato, California.

Deborah McComb

EXHIBIT 9

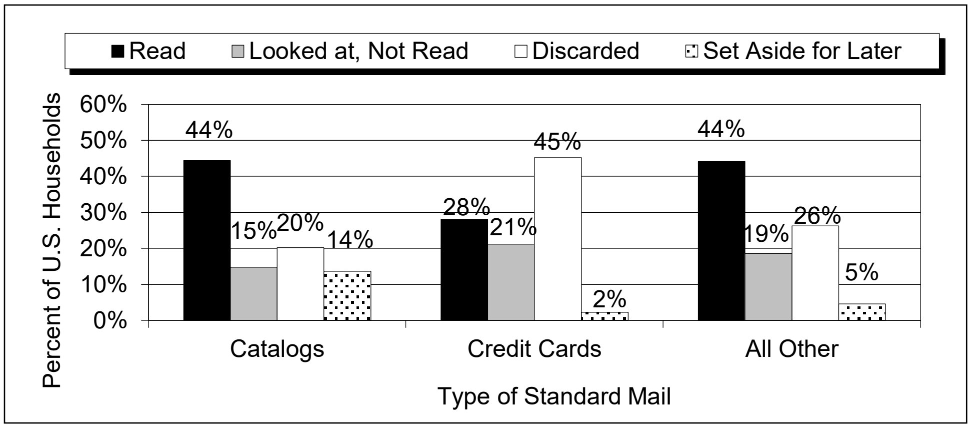
Figure 5.3:
Advertising Mail Behavioral Trends, FY 1987, 2013, 2014, and 2015


■Read ■Scan □Don't Read
Percent of U.S. Households
60%
50%
40%
30%
20%
10%
0%
49%
40%
9%
55%
21%
23%
57%
21%
21%
54%
21%
24%
1987
2013
2014
2015
Postal Fiscal Year

Source: HDS Recruitment Sample, FY 1987, 2013, 2014, and 2015.
Note: Percentages do not include those who did not provide a response.

Interestingly, the survey shows that not all advertising is treated equally. Figure 5.4 shows that catalogs attract more attention than credit card advertising, as they are usually more interesting to read. Forty-four percent of households read catalogs, and only 20 percent discard them without reading them. In contrast, 28 percent of households read credit card advertising, but 45 percent discard them without reading them.

Figure 5.4:
Treatment of Standard Mail by Type


■Read ■Looked at, Not Read □Discarded ⊡Set Aside for Later
Percent of U.S. Households
60%
50%
40%
30%
20%
10%
0%
44%
15%
20%
14%
28%
21%
45%
2%
44%
19%
26%
5%
Catalogs
Credit Cards
All Other
Type of Standard Mail

Source: HDS Diary Sample, FY 2015.
Note: Percentages do not include those who did not provide a response.

EXHIBIT 10

Chapter 3: Email

Chapter Highlights

- **Open rates ranged from a low of 7-8% * for emails sent to prospect lists to drive traffic. Ironically, emails sent to house lists to drive traffic enjoyed the highest open rate at 23-24%.**
- **Click rates were lowest for lead generation emails sent to prospect lists (3-4%)** and highest for B-to-B emails sent to house lists (17-18%).
- **Conversion rates were lowest for B-to-C, B-to-B and lead gen emails sent to prospect lists (1-1.9%)** and highest for email campaigns to drive traffic sent to house lists (4-4.9%).
- **For 36% of respondents, the primary purpose of emails sent to house lists was to make a direct sale.** For emails sent to prospect lists, 62% say the main purpose was lead generation.
- **Email usage for marketing campaigns equals or exceeds 80% for most industries.** Email usage is lower for Consumer Packaged Goods (63%), Education (70%), Financial Services/Insurance (75%), Healthcare/Pharmaceuticals (79%) and Travel/Hospitality (53%).

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Features Pricing Support Blog More Sign Up Free Log In b

Resources / MailChimp Research

Email Marketing Benchmarks

Average Unique Open, Click, Bounce, and Abuse Complaint Rates

Table of Contents:

Average Stats by Industry

Average Stats by Company Size

Tips for Improving Your Stats

Average Email Campaign Stats of MailChimp Customers by Industry

There are a lot of numbers in MailChimp's free reports, but you might be wondering how your email-marketing stats compare to others in the same industry. What kind of open rates should companies like yours expect? How many bounces are too many? What's an acceptable abuse complaint rate? The more context, the better.

MailChimp sends billions of emails a month for more than 10 million users. Needless to say, we track a lot of data. So we scanned hundreds of millions of emails delivered by our system (where campaign tracking was activated, and where users reported their industry) and calculated the average unique open rates, average unique click rates, average unique soft bounces, average unique hard bounces, and average unique abuse complaint rate by industry.

We only tracked campaigns that went to at least 1000 subscribers, but these stats aren't pulled from a survey of giant corporations with million-dollar marketing budgets and dedicated email-marketing teams. Our customers range from one-person startups to Fortune 500 companies, so the whole spectrum is represented in this data. Here's your apples-to-apples comparison with others in your industry.

Updated: April 4, 2016

Industry	Open	Click	Soft Boun
Agriculture and Food Services	25.17%	3.21%	0.62%
Architecture and Construction	25.06%	2.98%	1.56%
Arts and Artists	27.45%	2.89%	0.68%
Beauty and Personal Care	18.96%	2.14%	0.44%
Business and Finance	21.36%	2.75%	0.72%
Computers and Electronics	21.27%	2.32%	1.08%
Construction	22.64%	1.97%	1.68%
Consulting	19.63%	2.37%	0.96%
Creative Services/Agency	22.65%	2.74%	1.12%
Daily Deals/E-Coupons	13.87%	1.81%	0.13%
E-commerce	16.82%	2.48%	0.32%
Education and Training	21.96%	2.75%	0.58%
Entertainment and Events	21.56%	2.37%	0.53%
Gambling	17.10%	3.23%	0.38%
Games	21.41%	3.36%	0.48%
Government	26.26%	3.62%	0.51%
Health and Fitness	22.47%	2.81%	0.47%
Hobbies	28.85%	5.41%	0.35%
Home and Garden	24.60%	3.77%	0.64%
Insurance	20.60%	2.14%	0.76%

Legal	22.73%	2.97%	0.79%
Manufacturing	22.76%	2.50%	1.50%
Marketing and Advertising	18.31%	2.06%	0.81%
Media and Publishing	22.26%	4.62%	0.30%
Medical, Dental, and Healthcare	22.68%	2.49%	0.79%
Mobile	19.75%	2.18%	0.63%
Music and Musicians	22.99%	2.93%	0.63%
Non-Profit	25.25%	2.84%	0.52%
Other	23.33%	2.95%	0.84%
Pharmaceuticals	20.06%	2.60%	0.78%
Photo and Video	26.37%	3.87%	0.77%
Politics	22.84%	2.35%	0.47%
Professional Services	20.89%	2.63%	0.92%
Public Relations	20.01%	1.66%	0.80%
Real Estate	21.52%	1.98%	0.69%
Recruitment and Staffing	20.17%	2.30%	0.56%
Religion	26.35%	3.29%	0.21%
Restaurant	21.79%	1.30%	0.25%
Restaurant and Venue	22.07%	1.39%	0.60%
Retail	21.44%	2.65%	0.40%
Social Networks and Online Communities	21.87%	3.48%	0.40%
Software and Web App	21.56%	2.40%	1.11%
Sports	25.95%	3.45%	0.53%
Telecommunications	21.41%	2.49%	1.20%

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re ITT EDUCATIONAL SERVICES, INC. SECURITIES LITIGATION (INDIANA)	CASE NO. 1:14-cv-01599-TWP-DML **ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE OF PROPOSED SETTLEMENT**

WHEREAS, a putative class action is pending before the Court entitled *In re ITT EDUCATIONAL SERVICES, INC. SECURITIES LITIGATION (INDIANA)*, Civil Action No. 1:14-cv-01599-TWP-DML, United States District Court for the Southern District of Indiana (the "Litigation");

WHEREAS, the Court has received the Stipulation of Settlement dated as of November 2, 2015 (the "Stipulation")[1], which has been entered into by Plaintiffs, on behalf of themselves and all Members of the Settlement Class, and Defendants, and the Court has reviewed the Stipulation and the Exhibits annexed thereto;

WHEREAS, the Settling Parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with the Stipulation which sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation;

[1] For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, and the capitalized terms used herein shall have the same meaning as in the Stipulation.

d. Not later than seventy (70) days after the date of this Order, Plaintiffs' Lead Counsel shall cause to be served on Defendants' Counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing and posting.

10. Nominees who purchased or otherwise acquired ITT Securities between February 26, 2013 and May 12, 2015, both dates inclusive, shall send the Notice and the Proof of Claim to all beneficial owners of such ITT Securities within fourteen (14) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and the Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred in providing the Notice to beneficial owners who are potential Members of the Settlement Class out of the Settlement Fund, which expenses would not have been incurred except for the sending of such Notice, subject to further order of this Court with respect to any dispute concerning such compensation.

11. Any Person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), to be received no later than twenty-eight (28) days prior to the Settlement Hearing. A Request for Exclusion must state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) each of the Person's purchases and sales of ITT Securities made during the Settlement Class Period, including the dates of purchase or sale, the number of shares/options purchased and/or sold, and the price paid or received per share for each such purchase or sale; and (c) a statement that the Person wishes to be excluded from the Settlement Class. All Requests for Exclusion must also be signed by the Person requesting exclusion. All

other theory of claim preclusion or issue preclusion or similar defense or counterclaim under U.S. federal or state law or foreign law.

23. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation. In such an event, the Settling Parties shall return to their positions as of July 14, 2015, the date this Action was stayed pending settlement discussions, without prejudice in any way.

24. Pending the Settlement Hearing, the Court stays all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation.

25. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

DATED: 11/4/2015

Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

EXHIBIT 12

NRA NATIONAL RIFLE ASSOCIATION 1-877-NRA-2000

Updated: May 19, 2015

Privacy

NRA realizes how important privacy is to our membership. Therefore, we have adopted the following policy to advise you of your choices regarding the use of your personal information online. This policy describes what types of information we gather about you, how we use it, under what circumstances we disclose it to third parties, and how you can update it.

Information Collection

We gather certain broad information about website use including the number of unique visitors, the frequency with which they visit, and the programs and services preferred. We look at the data in summary form, rather than on an individual basis. We gather this information so we can learn how many people visit NRA sites, which pages are the most and least viewed, and which websites are referring visitors to our sites. We use this information to help us in restructuring sites to meet our members' needs. NRA sites do not respond to "Do Not Track" signals.

Most NRA sites and services are intended for general audiences and do not knowingly collect any personal information from children under 13 years of age. We are committed to complying fully with the Children's Online Privacy Protection Act of 1998. Of course, the NRA also encourages parents to discuss privacy issues with their children.

We compile lists for communications and marketing purposes. We will provide that information to NRA affinity partners who we believe provide goods and/or services that might be useful to NRA members. Contracts with these companies require them to keep the member information strictly confidential and prohibit them from using it for any other purpose. You may ask us to remove you from the lists by: (1) emailing from our Contact Us page; (2) calling us at 1-800-672-3888; or (3) writing to us at National Rifle Association of America, 11250 Waples Mill Road; Fairfax, VA 22030. We do not provide member information to telemarketers, mailing list brokers, or other companies that are not offering NRA-endorsed services or benefits. Third parties do not collect personally identifiable information about the online activities of individuals who visit NRA sites.

Cookies

The NRA online network utilizes a standard technology called a "cookie" to collect information about how our sites are used. Cookies are small strings of text stored on your computer's hard drive by a Web server. For example, session cookies identify your computer during a particular session to track the items you have placed in your "shopping cart" during a visit to our online stores.

The NRA uses cookies in conjunction with third parties (such as Facebook and Google) to provide measurement on marketing campaigns and send targeted advertisements to internet users. The NRA does not use any personally identifiable information when targeting users for advertisements. Using cookies allows personally identifiable information to remain undisclosed.

If you would like to opt-out of cookie collection, you can disable and or block third-party cookies in the settings section of your internet browser. If you would like to choose which third parties can use cookies on your internet browser and or see a list of the third parties which are using cookies on your internet browser, you can visit: www.aboutads.info/choices. Please note that if you choose to decline cookies, you may not be able to access certain interactive features and services offered on NRA sites.

IP Addresses

We collect and analyze traffic on our websites by keeping track of the Internet Protocol (IP) addresses of our visitors.

Personal Information

You may be asked to provide different types of personal information, including your name, date of birth, email address, mailing address or telephone number. Particular services may require additional information such as your

EXHIBIT 13

> *business records per month. Since 1968, ATF has received several hundred million such records, and its Out-of-Business Records repository is the only one of its kind in the world.*"

iii. Through the NRA, which reportedly possesses databases of the names and addresses of millions of gun owners.[20] Name, mailing address, and email address are required fields in NRA contact forms and membership forms.[21]

iv. The NRA privacy policy states that it allows third parties to use its lists:

> "*We compile lists for communications and marketing purposes. We will provide that information to NRA affinity partners who we believe provide goods and/or services that might be useful to NRA members.*"[22]

It would be surprising if the NRA refused to view the Court as an appropriate "affinity" partner if requested, let alone if ordered; or that Remington would not be an affinity partner. Remington could support this to ensure Class members received notice so that it could receive a closure from this settlement that would not be subject to collateral attack.

v. While the NRA probably does not have manufacturer and model numbers of guns associated with each member or mailing list entry such that a physical mailing would be over-inclusive, it would not be expensive to send email notices to their entire list, even if that list is over-inclusive.

vi. One of the earliest missions of the NRA involved rifle safety, so their refusal to comply with a Court request (or Order) to assist with a safety notification would be counter-intuitive.[23]

i. The notice vendor has previously advocated subpoenas seeking the assistance of third-parties in class action cases, citing other cases where other courts have done the same:

> *"Additionally, Plaintiff's counsel could propose a notice plan that includes serving subpoenas on retailers where the Pre-Cold Medicine is sold to consumers. These subpoenas would seek consumers' e-mail addresses from the retailers' loyalty card programs – for known purchasers of the Pre-Cold Medicine – to effectuate individual notice to class members. In fact, I understand that this precise mechanism for identifying class members was recently utilized by Chief Judge George H. King of the United States District Court for the Central District of*

[20] *See* Big Surprise, the NRA keeps a mailing list, http://blog.timesunion.com/guns/big-surprise-the-nra-keeps-a-mailing-list/2490/, last visited July 24, 2016.

[21] https://joinnra.nra.org/join/join.aspx, last visited July 25, 2016.

[22] https://membership.nrahq.org/privacy.asp, last visited July 25, 2016.

[23] https://home.nra.org/about-the-nra/, Last visited July 25, 2016.

California in Forcellati v. Hylands, Inc., C.D. Cal. Case No. CV 12-1983-GHK (MRWx), Dkt. No. 155, to provide direct mail or email notice to more than 800,000 purchasers of six homeopathic cold and flu remedies for children from records subpoenaed from retailers' loyalty card programs. Similarly, in Ebin v. Kangadis Food, Inc., S.D.N.Y. Case No. 13-CV-2311, Dkt. No. 96, Judge Jed Rakoff of the Southern District of New York used the same procedure to provide individual notice to nearly 200,000 olive oil purchasers."

Declaration of Steven A. Weisbrot in Support of Plaintiff's Motion for Class Certification, April 2, 2015, *Melgar v. Zicam*, E.D. Cal., Case No. 2:14-cv-00160-MCE-AC.

j. It is certainly possible to accommodate mailing list confidentiality issues when seeking to use mailing lists held by others:

   i. Lists held by third parties can be provided to "vendor A" without disclosing the nature of the case or the sources of the names.

   ii. Notices can be printed, stuffed into blank envelopes, and sealed by "vendor B."

   iii. Vendor B can send the sealed envelopes to vendor A who can apply the addresses and mail them by first class mail.

   iv. Pharmaceutical drug cases where patient privacy is a concern have utilized approaches such as this when necessary, and an approach could be used to satisfy gun owner "registration aversion" and mailing list confidentiality concerns.[24]

k. The notice vendor's website references many cases and orders where courts enlist third-parties to assist with the sending of mailings.[25] In virtually every securities fraud class action—the most common class action settlement there is—non-party nominees are ordered by courts to assist by either a) sending mailed notices to the beneficial holders if they wish to keep their data confidential, or b) providing the names and addresses to the administrator for the administrator to effectuate a mailing. These orders typically accommodate reimbursement of expenses to help the court fulfill its critical individual notice obligations. For example:

   i. *Larson v. Insys*, D. Ariz., Case No. Case No. CV-14-01043-PHX-GMS

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[24] *See* for example, *In re Serzone Products Liability Litigation*, 231 F.R.D. 221 (2005). This settlement provided substantial payments for a small subset of patients who had suffered injuries out of a large class of drug takers. Notice reached 80% of all purchasers through 370 million national impressions and used multiple sources of mailings to reach a far higher, though not precisely calculable, percentage of the injured patients, many of whom had come forward already, with the court employing careful privacy controls on the mailings, and resulting in a high percentage of the injured patients claiming payments.

[25] *See* http://www.angeiongroup.com/cases.htm, last visited July 22, 2016.

EXHIBIT 14

CAMPAIGN REACH/FREQUENCY REPORT

comScore

Geography :	United States
Universe :	Home and Work
Time Period :	February 2015
Campaign Duration :	30 Days
Target :	Persons: 18+
Media :	Google Network, Xaxis Network, Yahoo Network
Graph type :	None
Reach Option :	Total Population-Based
Date :	7/25/2016

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		Avail Page Views (000)	Impr as % of Avail Page Views	Impressions (000)	UVs (000)	% Reach Total Pop	Average Frequency	Reach Factor (%)	% Composition Impressions	% Composition UV	GRPs Total Pop
	Total Campaign										
1	Total Audience	541,138,168	0.0	41542	33,833	10.81	1.2		100.0	100.0	13
2	Persons: 18+	513,128,223	0.0	38845	30,437	12.37	1.3		93.5	90.0	16
[N]	Google Ad Network**										
3	Base Audience : Total Audience	390,588,768	0.0	21542	19,646	6.28	1.1	100.0	100.0	100.0	7
4	Persons: 18+	365,644,982	0.0	20166	18,194	7.39	1.1	100.0	93.6	92.6	8
[N](U)	Xaxis Publisher Network**										
5	Base Audience : Total Audience	315,688	3.2	10000	6,231	1.99	1.6	100.0	100.0	100.0	3
6	Persons: 18+	280,360	3.2	8881	5,578	2.27	1.6	100.0	88.8	89.5	4
[N]	Yahoo Audience Network**										
7	Base Audience : Total Audience	150,233,712	0.0	10000	9,544	3.05	1.0	100.0	100.0	100.0	3
8	Persons: 18+	147,202,880	0.0	9798	9,291	3.78	1.1	100.0	98.0	97.4	4

CAMPAIGN REACH/FREQUENCY REPORT

Geography : United States
Universe : Home and Work
Time Period : June 2016
Campaign Duration : 30 Days
Target : Persons: 18+
Media : Google Network, Xaxis Network, Yahoo Network
Graph type : None
Reach Option : Total Population-Based
Date : 7/24/2016

comScore

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		Avail Page Views (000)	Impr as % of Avail Page Views	Impressions (000)	UVs (000)	% Reach Total Pop	Average Frequency	Reach Factor (%)	% Composition Impressions	% Composition UV	GRPs Total Pop
	Total Campaign										
1	Total Audience	637,933,485	0.0	40920	33,292	10.54	1.2		100.0	100.0	13
2	Persons: 18+	604,176,054	0.0	38845	30,623	12.30	1.3		94.9	92.0	16
	[n1] Google Display Network**										
3	Base Audience : Total Audience	487,695,410	0.0	20920	19,081	6.04	1.1	100.0	100.0	100.0	7
4	Persons: 18+	456,380,224	0.0	19577	17,699	7.11	1.1	100.0	93.6	92.8	8
	[N](U) Xaxis Publisher Network**										
5	Base Audience : Total Audience	576,472	1.7	10000	6,207	1.97	1.6	100.0	100.0	100.0	3
6	Persons: 18+	543,565	1.7	9429	5,809	2.33	1.6	100.0	94.3	93.6	4
	[N] Yahoo Audience Network**										
7	Base Audience : Total Audience	149,661,603	0.0	10000	9,532	3.02	1.0	100.0	100.0	100.0	3
8	Persons: 18+	147,252,265	0.0	9839	9,322	3.75	1.1	100.0	98.4	97.8	4

EXHIBIT 15

CTR | CTR SM | CTR RM | Interaction Rate | Interaction Time | Expansion Rate | Video Complete | Average Display | Aver. Expanding | Video Midpoint

[All Countries - All Verticals - All Formats] Formats

Snapshot Report | Trends | Formats View | Map View

From: March 2016 To: March 2016

Explore the performance on the most common display ad slots.

All placements
(All sizes)

All formats
0.17 %

Flash In-Page
0.06 %

Image
0.04 %

Rich Media Expandable
0.50 %

Rich Media In-Page Flash
0.06 %

MPU
(300x250)

All formats
0.19 %

Flash In-Page
0.09 %

Image
0.05 %

Rich Media Expandable
0.55 %

Rich Media In-Page Flash
0.06 %

Leaderboard
(728x90)

All formats
0.03 %

Flash In-Page
0.03 %

Image
0.04 %

Rich Media Expandable
0.01 %

Rich Media In-Page Flash
0.05 %

Sky
(160x600)

All formats
0.05 %

Flash In-Page
0.04 %

Image
0.04 %

Rich Media In-Page Flash
0.07 %

5 FACTORS of VIEWABILITY

Many of the ads served on the web never appear on a screen. But thanks to new advancements, we can now measure which digital ads were actually viewable—on screen. And as advertisers shift to paying for viewable instead of served impressions, it's important to understand what factors affect ad viewability. We explored this by conducting a study of our display advertising platforms, including Google and DoubleClick. Here we size up five factors of viewability—from page position to ad dimensions and more.

VIEWABLE IMPRESSIONS: A new industry standard

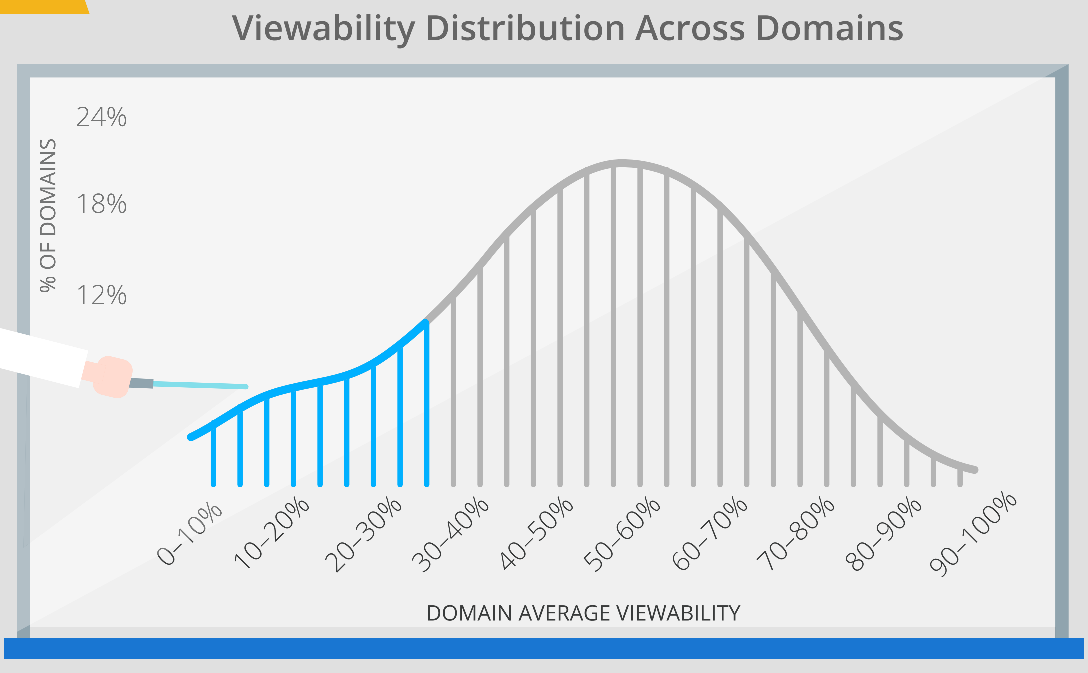
A display ad is considered viewable when **50% of an ad's pixels are in view** on the screen **for a minimum of one second,** as defined by the Media Rating Council.

ONE SECOND

Viewability rate: Percentage of ads determined viewable out of the total number of ads measured.

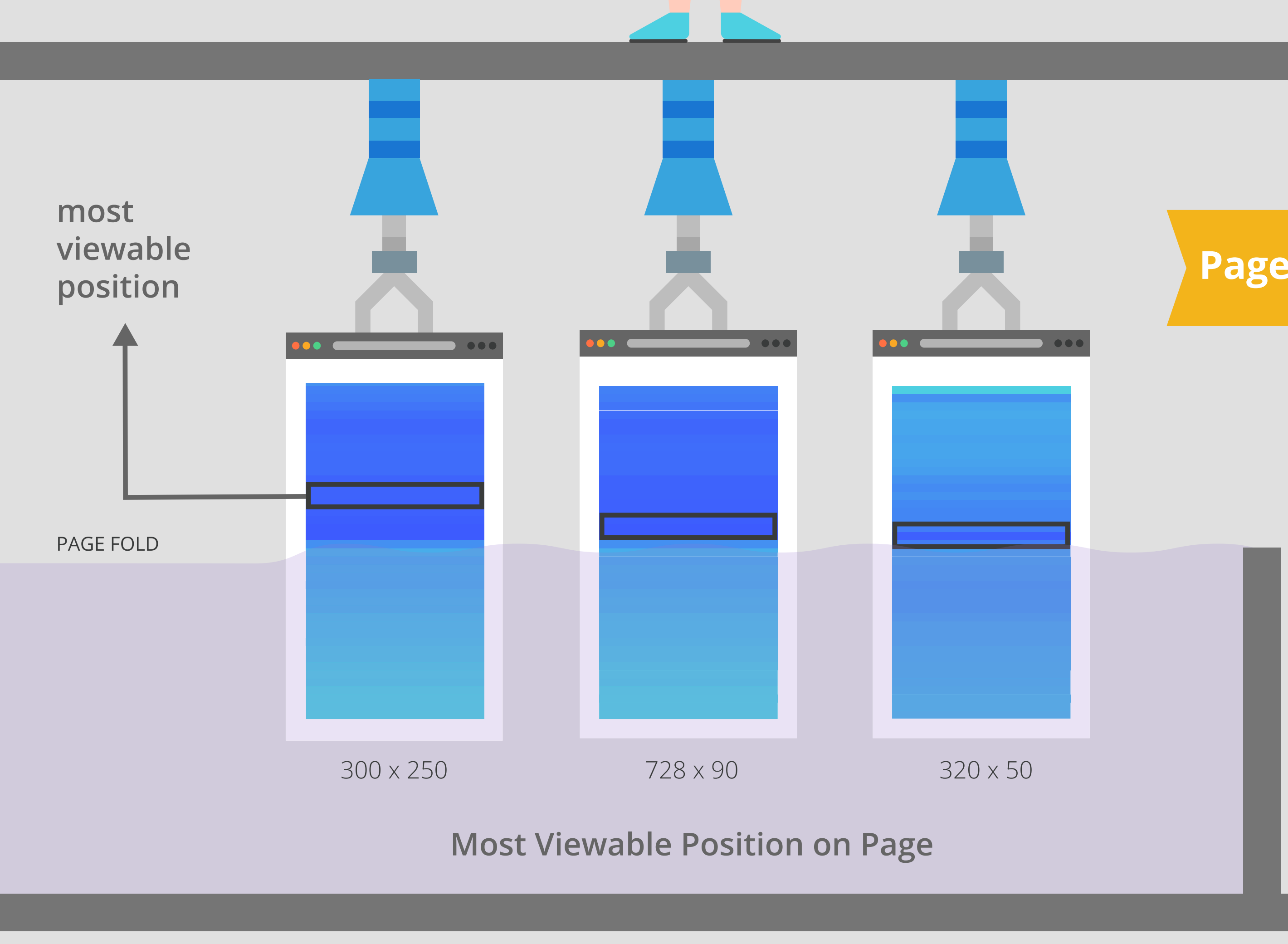
1 State of publisher viewability

A small number of publishers are serving most of the non-viewable impressions; **56.1% of all impressions** are not seen, but the average **publisher viewability is 50.2%.**



Viewability Distribution Across Domains
24%
18%
12%
% OF DOMAINS
0–10%
10–20%
20–30%
30–40%
40–50%
50–60%
60–70%
70–80%
80–90%
90–100%
DOMAIN AVERAGE VIEWABILITY

2 Page position matters ...



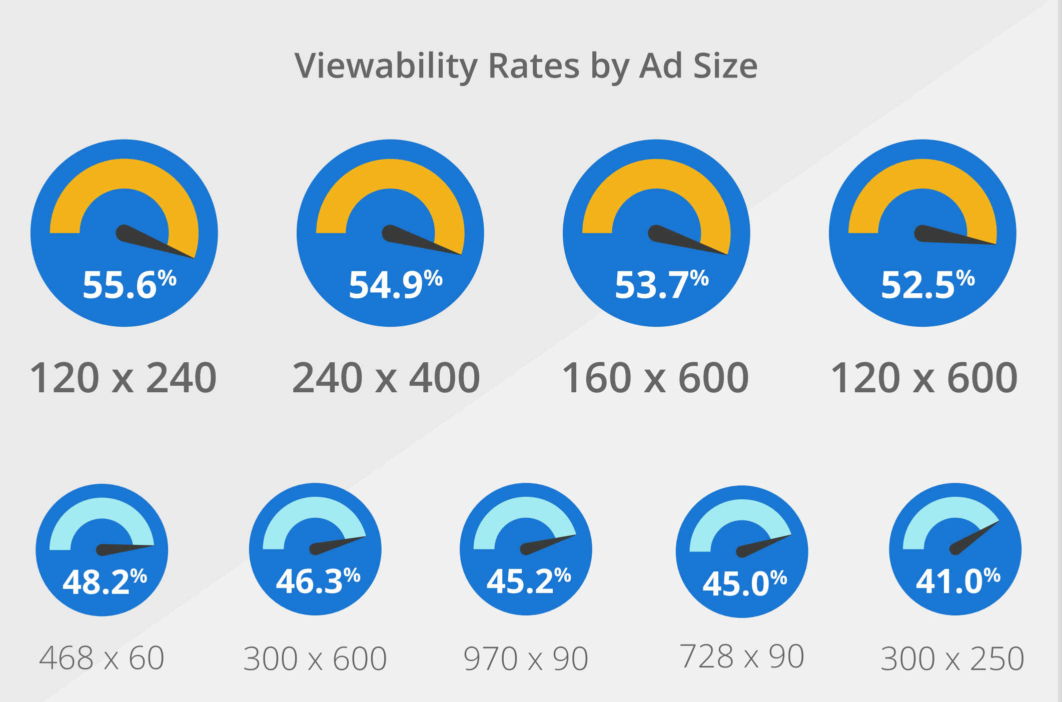
most viewable position
PAGE FOLD
300 x 250
728 x 90
320 x 50
Most Viewable Position on Page

The most viewable position is **right above the fold,** not at the top of the page.

3 ... So does ad size

The most viewable ad sizes are **vertical units.** Not a surprise, since they stay on screen longer as users move around a page.

Popular ad size rates



Viewability Rates by Ad Size
55.6%
120 x 240
54.9%
240 x 400
53.7%
160 x 600
52.5%
120 x 600
48.2%
468 x 60
46.3%
300 x 600
45.2%
970 x 90
45.0%
728 x 90
41.0%
300 x 250

4 Above the fold ≠ always viewable

average viewability rates

ABOVE THE FOLD 68%

BELOW THE FOLD 40%

Page position isn't always the **best indicator of viewability.**

Not all above-the-fold impressions are viewable, while **many below-the-fold impressions are.**

5 Viewability varies across industries

While it ranges across content verticals, or industries, content that **holds a user's attention** has the highest viewability.

Industry	Viewability
Reference	51.9%
Online Communities	48.9%
Games	48.4%
Arts & Entertainment	48.0%
Jobs & Education	47.8%
Business & Industrial	47.2%
Computers & Electronics	47.1%
Science	46.6%
Internet & Telecom	46.4%
Hobbies & Leisure	44.8%

Source: Google, "The Importance of Being Seen: Viewability Insights for Digital Marketers and Publishers" study, November 2014.

EXHIBIT 16

United States Senate

WASHINGTON, DC 20510

July 11, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Chairwoman Ramirez,

We write to you regarding digital advertising fraud and the associated negative economic impact on consumers and advertisers.

The landscape of advertising in this country has changed considerably. As media consumption has expanded to an ever-larger array of platforms and sources, advertisers have been forced to rethink their marketing efforts to reach consumers across a broader media landscape. These developments have prompted tremendous innovation in online marketing. At the same time, today's media ecosystem has in some ways reduced market transparency. Internet advertising revenues in 2015 were estimated to have totaled $59.6 billion,[1] yet many of the purchased online advertisements are not reaching their intended audience.

The infrastructure to accommodate the rise of digital advertising has grown as sophisticated as our financial markets. A dense network of intermediaries has arisen in order to accommodate the growing automation of ad-buying and selling, much like stock exchanges. Within these intricate exchanges, the real-time bidding for advertising content depends heavily on the recorded consumer traffic on a given platform.

Much like a stock, the value of an ad impression is highly contingent on measured demand. However, the problem with relying on ad "clicks" or "views" to measure that value is that recent studies have shown this data is frequently inaccurate.[2] According to one study, between 88 and 98 percent of all ad-clicks on major advertising platforms such as Google, Yahoo, LinkedIn, and Facebook in a given seven day period were not executed by human beings, but rather by computer-automated programs commonly referred to as "botnets" or "bots."[3] These programs allow hackers to seize control of multiple computers remotely, providing them access to personal information as well as the ability to remotely install malware to engage in advertising fraud, entirely unbeknownst to the computer's true owner.[4] The ad fraud market has scaled to such an extent that it has attracted participation by organized crime, with a recent report indicating that by 2025 ad fraud could represent the second largest revenue source for organized crime groups after drug trafficking.[5]

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[1] See Sarah Sluis, *IAB Report: Digital Advertising's $10 Billion Growth Propelled By Mobile* (April 21, 2016, 3:20pm), http://adexchanger.com/online-advertising/iab-report-digital-advertisings-10-billion-growth-propelled-by-mobile/.
[2] See Ben Elgin, Michael Riley, David Kocieniewski, Joshua Brustein, *The Fake Traffic Schemes That Are Rotting the Internet* (October 20, 2015), http://www.bloomberg.com/features/2015-click-fraud/.
[3] See Adrian Neal, *Quantifying Online Advertising Fraud: Ad-Click Bots vs Humans* (January, 2015), http://oxford-biochron.com/downloads/OxfordBioChron_Quantifying-Online-Advertising-Fraud_Report.pdf.

Bots plague the digital advertising space by creating fake consumer traffic, artificially driving up the cost of advertising in the same way human fraudsters can manipulate the price of a stock by creating artificial trading volume. In each case, markets highly sensitive to demand signals are manipulated. These bots range in sophistication. While "basic" bots can only mimic human "clicks" on an advertisement, so-called "humanoid" bots can mimic human mouse touch movements with such precision that deep behavioral analysis is required to detect them.[6] Many of these bots are advanced enough to analyze consumer web activity in order to retarget advertisements based on individual browsing preferences.

A comprehensive study conducted by White Ops and the Association of National Advertisers estimates that this market manipulation scheme will cost advertisers over $7.2 billion in the next year alone.[7] Additionally, it is anticipated that as the budget for mobile advertising grows, so will the incidence of bot fraud in mobile advertising, which already accounts for 30 percent of annual digital advertising revenue.[8]

The potential for revenue leakage is so great that our nation's leading advertisers and platforms are already working on new systems to combat these highly evolved computer programs. In February 2014, Google bought spider.io, a company focused on identifying digital ad fraud.[9] In May 2015, the Trustworthy Accountability Group (TAG), an industry group created specifically to stem advertising fraud, rolled out a "Fraud Threat List," through which members will disclose third party vendors promulgating fraudulent consumer traffic.[10] While these developments are significant, it remains to be seen whether voluntary, market-based oversight is sufficient to protect consumers and advertisers from digital advertising fraud. And in the interim, consumer confidence in digital advertising markets has eroded, as evidenced by user adoption of ad blocking tools.[11]

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[4] See The Federal Bureau of Investigation, *Botnets 101: What They Are and How to Avoid Them* (June 6, 2013, 7:00am) https://www.fbi.gov/news/news_blog/botnets-101/botnets-101-what-they-are-and-how-to-avoid-them.
[5] Patrick Kulp, *Ad Fraud Could Become the Second Biggest Organized Crime Enterprise Behind the Drug Trade* (June 9, 2016), http://mashable.com/2016/06/09/ad-fraud-organized-crime/#P7lUa9yimtqL.
[6] See supra note 3, at 4.
[7] See Association of National Advertisers, *The Bot Baseline: Fraud in Digital Advertising* (2016), http://www.ana.net/content/show/id/botfraud-2016.
[8] See IAB and PricewaterhouseCoopers, *IAB Internet Advertising Revenue Report, 2015 Half Year Results* (October, 2015) http:// http://www.iab.com/wp-content/uploads/2015/10/IAB_Internet_Advertising_Revenue_Report_HY_2015.pdf.
[9] See Alex Kantrowitz, *Inside Google's Secret War against Ad Fraud* (May 18, 2015), http://adage.com/article/digital/inside-google-s-secret-war-ad-fraud/298652.
[10] See The Trustworthy Accountability Group, *Trustworthy Accountability Group (TAG) and Digital Ad Leaders Announce New Program to Block Fraudulent Data Center Traffic* (July 21, 2015) https://www.tagtoday.net/tag-and-dal-announce-new-program-to-block-fraudulent-data-center-traffic.
[11] Tim Baysinger, *The Online Industry is Losing $8 Billion a Year, and Ad Blocking Is the Least of Its Worries* (Dec. 1, 2015) www.adweek.com/news/advertising-branding/how-online-industry-losing-8-billion-every-year-168389. ("The IAB considers the adoption of ad blockers to be a side effect of the spread of malicious software, or malware, which costs a total of $1.1 billion in lost dollars.")

The cost of pervasive fraud in the digital advertising space will ultimately be paid by the American consumer in the form of higher prices for goods and services. Just as federal regulation has evolved to keep pace with the ever-growing sophistication of our financial markets, so must oversight of the digital advertising space. To this end, we respectfully request that the Federal Trade Commission (FTC) respond to the following questions:

1. As noted above, digital advertising fraud takes many forms, including through botnets and malware. Is the FTC observing a trend that favors one particular type of advertising fraud over another? If so, what factors are leading to the prevalence of that particular type of fraud?

2. What is the projected economic impact of this degree of data and revenue leakage amongst media owners or publishers?

3. What steps is the FTC taking to protect consumer data and mitigate fraud within the digital advertising industry? What regulatory agency currently provides oversight of mobile advertising platforms?

4. What steps can be taken to reform opaque advertising exchanges?

5. What can be done to more closely align the incentives of ad tech companies with publishers, advertisers and consumers?

6. To the extent that criminal organizations are involved in perpetuating digital advertising fraud, how is the FTC coordinating with both law enforcement (e.g., the Department of Homeland Security or the Federal Bureau of Investigation) and the private sector to formulate an appropriate response?

Thank you for your timely attention to these issues.

Sincerely,

Mark R. Warner
United States Senator

Charles E. Schumer
United States Senator

Examples of News Stories - Fraud of Overstated Internet Banner Reach Statistics

Within the last year, a deluge of national and advertising industry press is revealing a massive $6.3 billion to $8.2 billion internet advertising fraud. Revelations include that millions of internet banner "impressions" that advertisers have been buying for incredibly low prices are seen, not by human beings, but by robots or are outright fake. The majority are not "viewable" as that term is defined:[1]

The Alleged $7.5 billion Fraud in Online Advertising. MOZ, June 22, 2015. *"This is the biggest advertising story of the decade, and it's being buried...the three main allegations…half or more of the paid online display advertisements that ad networks, media buyers, and ad agencies have knowingly been selling to clients over the years have never appeared in front of live human beings. In another words, an "impression" occurs whenever one machine (an ad network) answers a request from another machine (a browser)… Just in case it's not obvious: Human beings and human eyeballs have nothing to do with it. If your advertising data states that a display ad campaign had 500,000 impressions, then that means that the ad network served a browser 500,000 times—and nothing more."*[2]

Is Ad Fraud Even Worse Than You Thought? Bloomberg Businessweek Seems to Think So. Ad Age, September 25, 2015. *"Just how much of a problem is ad fraud? If you're a regular reader of Ad Age, you know it's a big problem—though just how big depends on lots of variables, including specific digital agencies, ad-tech vendors and publishers a given marketer chooses to work with."*[3]

How Much of Your Audience is Fake? Marketers thought the Web would allow perfectly targeted ads. Hasn't worked out that way. Bloomberg Businessweek, September 25, 2015. *"The most startling finding: Only 20 percent of the campaign's "ad impressions"—ads that appear on a computer or smartphone screen—were even seen by actual people...As an advertiser we were paying for eyeballs and thought that we were buying views. But in the digital world, you're just paying for the ad to be served, and there's no guarantee who will see it, or whether a human will see it at all...Increasingly, digital ad viewers aren't human. A study done last year in conjunction with the Association of National Advertisers embedded billions of digital ads with code designed to determine who or what was seeing them. Eleven percent of display ads and almost a quarter of video ads were "viewed" by software, not people. According to the ANA study, which was conducted by the security firm White Ops and is titled The Bot Baseline: Fraud In Digital Advertising, fake traffic will cost advertisers $6.3 billion this year."*[4]

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[1] A display ad is considered viewable when 50% of an ad's pixels are in view on the screen for a minimum of one second, as defined by the Media Ratings Council.

[2] https://moz.com/blog/online-advertising-fraud, last visited April 28, 2016.

[3] http://adage.com/article/the-media-guy/ad-fraud-worse-thought/300545/, last visited April 28, 2016.

[4] http://www.bloomberg.com/features/2015-click-fraud/, last visited April 28, 2016.

What's Being Done to Rein in $7 Billion in Ad Fraud. AdWeek, Feb. 21, 2016. "*Long a dirty little secret of the digital media business, the topic of ad fraud has been thrust front and center in discussions among agency executives, advertisers and publishers over the last three years. Bot traffic, or nonhuman digital traffic, is at its highest ever, and recent projections from the Association of National Advertisers have more than $7 billion in advertising investment wasted.*"[5]

Inside Yahoo's troubled advertising business. CNBC, Jan. 7, 2016. "*The company's ad business, which brought in $1.15 billion in the second quarter of 2015, is rife with ad fraud, multiple sources told CNBC...the company's programmatic video ad platform generates mostly fraudulent ad traffic, and otherwise does not work as promised. The platform is largely powered by BrightRoll, which was acquired by Yahoo in November 2014.... discovered 30 to 70 percent of its ads were not running in areas where Yahoo was claiming they were. ...Another source said that it found BrightRoll's traffic was mostly coming from data centers' IP addresses, suggesting most of the ad views were nonhuman and fraudulent.*"[6]

Ad Fraud, Pirated Content, Malvertising and Ad Blocking Are Costing $8.2 Billion a Year, IAB says. Ad Age, Dec. 1, 2015. "*More than half of the money lost each year derives from 'non-human traffic' -- fake advertising impressions that advertisers pay for but don't represent contact with real consumers, the [Interactive Advertising Bureau] said in the report, which was conducted for the group by Ernst & Young.*"[7]

No More Ads. Wall Street Journal, February, 17, 2015. "*As if the online ad industry didn't have enough thorny issues to deal with–from fraud to ads nobody can see–here come the ad blockers. Reams of people, mainly young and tech-savvy folks, the kinds of people lots of advertisers want to reach, are downloading and utilizing ad blocking software–or tools that keep online ads from ever appearing on a person's screen. Ad blocking is on the rise, and the topic has been thrust to the top of the list by online ad industry leaders, reports Ad Age. In the short term, this creates another worry for brands, who now have to fret about whether they are paying for ads that are getting blocked. But in the long term, the bigger worry for Web publishing is when does the cumulative effect of what seems like a mounting list of problems cause more advertisers to say, "You know what? The Internet just isn't ready for prime time, or my ad budgets.*"[8]

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[5] http://www.adweek.com/news/advertising-branding/whats-being-done-rein-7-billion-ad-fraud-169743, last visited April 28, 2016.

[6] http://www.cnbc.com/2016/01/07/yahoos-troubled-advertising-business.html, last visited April 28, 2016.

[7] http://adage.com/article/digital/iab-puts-8-2-billion-price-tag-ad-fraud-report/301545/, last visited April 28, 2016.

[8] http://blogs.wsj.com/cmo/2015/02/17/cmo-today-apples-watch-is-coming-soon/, last visited April 28, 2016.

EXHIBIT 17

Exhibit B

					Media 360 Single
Target: Own Rifle					
Population (000): 25260 (10.6% of Comp Base)					
Target Filename: 1Rifle_M152Y.DEU					
Population (000): 25260 (10.6% of Comp Base)					
Study: M152Y MRI 2015 DOUBLEBASE STUDY					
Formula Based, Tru Cume R&F method, v2.9.0.14					
Vehicle Totals for target Rifle					
			Audience	**%**	**%**
Media	**Insertions**	**GRP**	**[000]**	**Coverage**	**Reach**
Athlon Sports & Life	1	17.63	4,454	17.63	17.63
American Hunter	1	5.9	1,490	5.9	5.9
American Rifleman	1	8.47	2,141	8.47	8.47
Parade Carrier Newspapers	1	23.44	5,921	23.44	23.44
Field & Stream	1	8.53	2,156	8.53	8.53
Guns & Ammo	1	10.48	2,648	10.48	10.48
Media Totals					
	Total		**%**	**Avg**	**Effective**
	Uses	**GRP**	**Reach**	**Frequency**	**Reach % (3+)**
Schedule 1	6	74.47	**42.23**	1.76	7.48

EXHIBIT 18

OHIO STATE
JOURNAL ON DISPUTE RESOLUTION
Published in Cooperation with the ABA Section of Dispute Resolution

2008 SYMPOSIUM ISSUE

THE SECOND GENERATION OF DISPUTE SYSTEM DESIGN: REOCCURRING PROBLEMS AND POTENTIAL SOLUTIONS
— JANUARY 24, 2008 —

ARTICLES

Designing Justice: Legal Institutions and Other Systems for Managing Conflict
Lisa Blomgren Bingham

Second-Generation Dispute System Design Issues in Managing Settlements
Francis E. McGovern

The Movement Toward Early Case Handling in Courts and Private Dispute Resolution
John Lande

Future Dispute System Design: Ethical Imperatives, Millennial and Beyond
Dale C. Hetzler & Ashley Nicole Speth

Toward a Strategic Theory of Workplace Conflict Management
David B. Lipsky & Ariel C. Avgar

http://moritzlaw.osu.edu/jdr
VOLUME 24 2008 NUMBER 1

Second-Generation Dispute System Design Issues in Managing Settlements

FRANCIS E. MCGOVERN*

In pushing the envelope of dispute system design, we have focused primarily on successes and productive innovation. We have neglected to concentrate as well on the less successful and less productive outcomes of designing dispute systems. One of the most fruitful approaches to second-generation design of dispute systems can be to focus on failure mode analysis. Second-generation learning can benefit as much from understanding why designs fail as it can from understanding why they succeed.

In the area of settlement distribution, success and failure comprise a continuum versus a dichotomy. There is typically more success or less success, or success in some domains and failure in others, rather than absolute failure. By examining levels of success in two recent settlement distribution plans, it may be possible to advance our understanding of design processes sufficiently to avoid modes of failure that might otherwise occur, and to inform the next generation of settlement plan developers of the tensions and tradeoffs that may result from features of their plans and their implementation.

In particular, it is helpful to study the inherent tensions that exist in those cases. Tensions derive from competing goals. For example, there is a tension between efficiency and equity in simplifying the claims process for legitimate claimants and minimizing fraud by requiring comprehensive documentation. These tensions can pose different issues for different stakeholders including filers, attorneys, claims administrators, courts, and regulators. The most critical tension arises over who should have the decisionmaking authority to resolve or minimize these inherent tensions.

This article is designed to use an examination of two settlement distribution designs to appreciate some of the second-generation problems and solutions in this area. In addition, this analytic process should be helpful in any second-generation evaluation.

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* Professor of Law, Duke University School of Law, Durham, North Carolina. Professor McGovern was the Special Master for *In re Currency Conversion Fee Antitrust Litigation* and *In re Pharmaceutical Industry Average Wholesale Price Litigation* and, as a result, this paper recounts in large part his participation as special master in these cases. Special thanks to Ron Bertino, Pat Ebener, Tom Glenn, Jeanne Malone, and Ed Radetich for assistance with and review of earlier drafts of this article. In addition, recognition is due to the editorial staff of the Journal for ensuring that this paper met the standards of the *Ohio State Journal on Dispute Resolution*.

I. *IN RE* CURRENCY CONVERSION FEE ANTITRUST LITIGATION

In 2001, a lawsuit was filed against Mastercard, Visa, Diner's Club, and their related issuing banks alleging that they had overcharged their customers from 1%–3% in foreign currency conversion fees in the use of their credit, charge, debit, and ATM cards between 1996 and 2006.[1] The case was settled in 2006 for $336 million by Mastercard, Visa, Diner's Club, and six issuing banks.[2] The settlement amount included the administrative fees of the settlement distribution and attorney's fees.[3] As part of the settlement, the settling banks agreed to insert claim forms for the distribution process in the monthly paper bills for 20.8 million current MasterCard and Visa accounts with foreign currency transactions between February 1, 1996 and November 8, 2006.[4] On November 8, 2006, the court granted preliminary approval of the proposed settlement, including the claim form.[5] The court also appointed a claims administrator and made provisions for objections, opportunities to opt out, and the assessment of attorneys' fees, and set a date for a final fairness hearing.[6]

Counsel had developed a claim form and a notice campaign as part of their settlement agreement.[7] The claim form required that an eligible cardholder list the annual amount of their foreign transactions for each of their cards, as indicated in Appendix A. The claims forms were enclosed with one monthly account statement mailed to cardholders during the period from January through March of 2007. There was also a website from which a claim form could be downloaded and a toll free telephone number was made available for potential beneficiaries with questions.

As of June 30, 2007, there had been 90,000 claim forms filed—60% on paper and 40% electronically—representing an extremely low response rate of 0.45% in light of the 20.8 million notices mailed to card holders.[8] In addition, there were complaints filed with the court criticizing the reporting

[1] Consolidated Amended Class Action Complaint at 1, *In re* Currency Conversion Fee Antitrust Litigation, 265 F. Supp. 2d. 385 (S.D.N.Y. 2003) (Nos. 1409, M 21-95).

[2] Stipulation and Agreement of Settlement at 3, *In re* Currency Conversion Fee Antitrust Litigation, *supra* note 1.

[3] *Id.* at 41–42.

[4] *In re* Currency Conversion Antitrust Litigation, Nos. 1409, M 21-95, 2006 WL 3253037 (S.D.N.Y. November 8, 2006) (order certifying settlement classes).

[5] *Id.* at 5.

[6] *Id.*

[7] Memorandum from Francis E. McGovern, Special Master, to Judge William H. Pauley III (July 10, 2007) (on file with author).

[8] *Id.* at 2.

requirements in the claiming process and questioning why the data being requested was not already available to the claims administrator from the credit card companies.[9] At a hearing on May 11, 2007, the court suggested the appointment of a special master to assist the court and the parties in devising and implementing a revised notice and claim procedure. The court halted the notice campaign and appointed a special master on May 18, 2007.[10] After a series of meetings with counsel for the parties, the special master submitted a report to the court on July 10, 2007 that analyzed the initial filings, the feasibility of using the banks' data available in a computerized format, and possible mechanisms for a greater use of that computerized data in calculating payments, and suggested seven alternative approaches for structuring the claim filing, review, and payment mechanisms.[11] Each alternative was presented with accompanying assumptions and projected outcomes based on six variables: definition of claimant, size of claimant population, response rate, average payment per claimant, expected total payment, and expected total cost.[12] The presentation was made in a format that enabled the court and parties to change the assumptions about each alternative and readily determine how the outcomes would be affected by the changes in assumptions.

The special master's report recommended a new notice and claim form to incorporate three options for claimants to choose from depending on their estimated losses and ability to thoroughly document their claim: (1) a flat payment of $25; (2) an estimate of the number of days spent in foreign countries during the covered time period so an algorithm of typical expenses would be applied to estimate a payment; and (3) the original form of annual estimates of foreign expenditures by credit card. The new claim form is contained in Appendix B. The flat payment option was designed to take advantage of claimants' propensities to make claims only if the form is easy to understand and easy to complete, in comparison to having to obtain ten years of proof of foreign spending. Based upon the forms filed prior to June 30, 2007, it was recommended that an individual who spent no more than one week abroad or had foreign currency expenditures not greater than $2,500 would have been eligible for a $25 payment that would be consistent with the limited foreign conversion fees charged to most cardholders.[13] At the same time, the level of potential fraud was reduced from this option because only cardholders who had foreign currency expenditures were included in the mailings.

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 2.

[12] *Id.*

[13] McGovern, *supra* note 7.

The second option was designed for customers who might feel that $25 was inadequate but that compiling annual records was too onerous or not feasible.[14] Most foreign travelers can remember how many days they spend overseas annually more easily than they can remember how much money they charged on their credit cards. In an optimal world, the issuing banks would have had a computerized listing of annual charges, but the databases for those charges were not accessible for a variety of reasons, including changes in bank ownership of cards, changes in card names, and incompatibility resulting from changes in databases and their management software over time. By listing the number of days spent overseas, however, a claimant would be more likely to feel that the settlement payment would be based upon their actual circumstances. The calculation of the algorithm could be accomplished from publicly available data from the travel industry about foreign expenditures. Although the public travel industry data was not a perfect fit, assumptions could be made to approximate the annual currency conversion fees based upon the number of days spent in a foreign country.

The third option was virtually identical to the one offered on the original claim form. The resulting cover letter and claim form options were reviewed by the lawyers and the claims administrator, and were further refined based on testing and feedback obtained from focused interviews with potential beneficiaries. There was a consensus developed among all the constituents that the resulting letter, claim form, notice campaign, website, and 800 telephone number scripts were acceptable.[15]

On September 17, 2007, the parties submitted a joint status report, and the court approved the revised claim form package, mailing lists, reduction of duplicate claims, publication notice program, and revised settlement distribution schedule.[16] The parties also included an allocation protocol in the event that the number and amount of claims exceeded the available funds. The cost of the mailings, which began on December 1, 2007, to approximately 38 million cardholders, was anticipated to be approximately

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[14] The concept of the second option was developed by the special master during a series of meetings with the parties in order to allow claimants to quantify their foreign travel in an easier manner than the original claim form afforded.

[15] Joint Filing of Proposed Notice Schedule, Claim Form, and Claims and Administration Budget (S.D.N.Y. August 31, 2007), *In re* Currency Conversion Fee Antitrust Litigation, *supra* note 1; Order (S.D.N.Y. November 24, 2007), *In re* Currency Conversion Fee Antitrust Litigation, *supra* note 1.

[16] Joint Filing of Proposed Notice Schedule, Claim Form, and Claims and Administration Budget, *supra* note 15.

$14 million.[17] The revised summary notice contained in Appendix C was placed in twenty-seven newspapers and other print and electronic media at an advertising cost of $941,000.

On July 15, 2008, the plaintiffs' counsel filed a status report indicating, after elimination of duplicates, that there had been 10,115,836 claims filed, with 7,200,413 claimants choosing option 1; 2,600,315 claimants choosing option 2; and 315,108 claimants choosing option 3.[18] In addition, there were approximately 22,000 late claims filed, and 2,910 requests for exclusion were filed.[19] Total expenses of claims processing were almost $25,000,000 as of that time.[20]

As shown in the table below, an analysis of the claims reveals that 49% of option 1, 50% of option 2, and 58% of option 3 were filed electronically. The option 1 claims represent 71.2% of the total claims filed, option 2 claims represent 25.7%, and option 3 claims represent 3.1%. The overall response rate greatly increased over the first mailing. The response rate was approximately 27% of the mailings using the three option claim form. This rate takes into account that duplicates or suspected duplicates were deducted from the claims received but remain unknown among the mailings, and a small percentage of the claims were submitted by downloading the claim form from the internet site rather than from the mailings. A compilation of data from other consumer cases in which there have been similar numbers of potential beneficiaries reveal that this is an exceptionally high response rate.[21]

Option	Claims Filed	Percent Electronic	Percent of Total Filed
1	7,200,413	49	71.2
2	2,600,315	50	25.7
3	315,108	58	3.1
Total	10,115,836	50	100

[17] *Id.* at Tab B.

[18] Plaintiffs' Notice of Filing of Status Report Concerning the De-Duping of Claims and the Settlement Administration Process at 3 (S.D.N.Y. July 15, 2008), *In re* Currency Conversion Fee Antitrust Litigation, *supra* note 1.

[19] *Id.* at 4.

[20] *Id.* at 13.

[21] Analysis of historical case data compiled for presentation to the court in *In re* Global Research Analyst Settlement (on file with the author).

There is no way to know what the response rate would have been if the original claim form had not been changed. Indeed, most observers would probably conclude that the extremely low response rate of less than one-half percent was consistent with other similarly situated cases. What is certain is that with the addition of new options, as well as a different format and delivery mechanism, the publication of notice and media coverage around the case increased the response rate substantially. This increase in access to claiming among card holders, which could be considered a fairer form of distribution, was accomplished at significant additional costs and time, raising one of the inherent tensions between efficiency and equity in the distribution process.

II. *IN RE* PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

In 2001, a lawsuit was filed against forty-two pharmaceutical manufacturers alleging that the defendants reported false and inflated average wholesale prices (AWP) for certain types of drugs administered through outpatient clinics.[22] AWPs are used to set prescription drug prices for payment by Medicare, consumers, and insurers.[23] The lawsuit sought damages for overpayments for the affected drugs. In 2006, GlaxoSmithKline (GSK) settled with the plaintiffs for $70 million.[24] After payment of $4.5 million to certain state attorneys general, attorneys' fees, and settlement fund administrative costs, 70% of the net fund was designated for third-party payers who made reimbursement payments for one or more of ten named drugs.[25] The remaining 30% was designated for individuals who made payments or co-payments other than flat or fixed payments. The time frame varied but was generally from 1991 to 2006.[26]

After preliminary approval of the settlement on November 15, 2006, nationwide notice by publication and by website was provided.[27] In addition,

---

[22] Complaint, *In re* Pharmaceutical Industry Average Wholesale Price Litigation, (D. Mass. 2001) (No. 01-CV-12257-PBS, MDL. No. 1456).

[23] *Id.*

[24] Settlement Agreement and Release of the GlaxoSmithKline Defendants at 4 (D. Mass. June 22, 2007), *In re* Pharmaceutical Industry Average Wholesale Price Litigation, *supra* note 22.

[25] *Id.* at 5.

[26] *Id.*

[27] Declaration of Katherine Kinsella in Support of Motion for Final Approval of the Settlement with GlaxoSmithKline at 10 (D. Mass. June 22, 2007), *In re* Pharmaceutical Industry Average Wholesale Price Litigation, *supra* note 22.

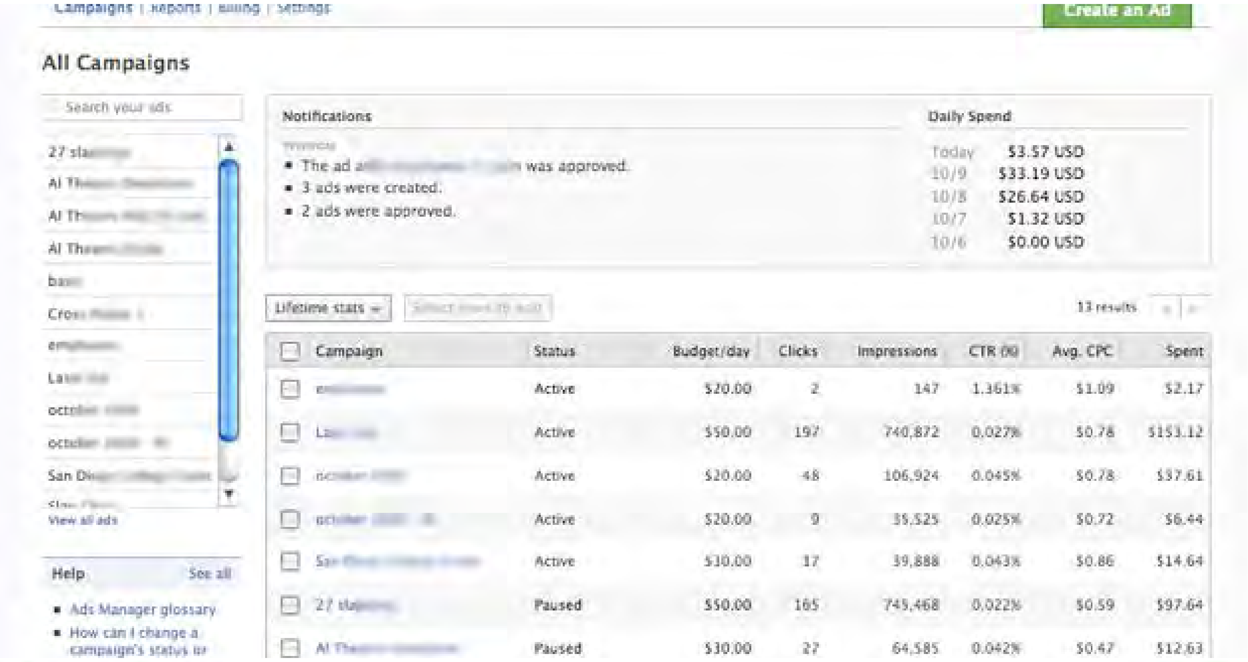
EXHIBIT 19

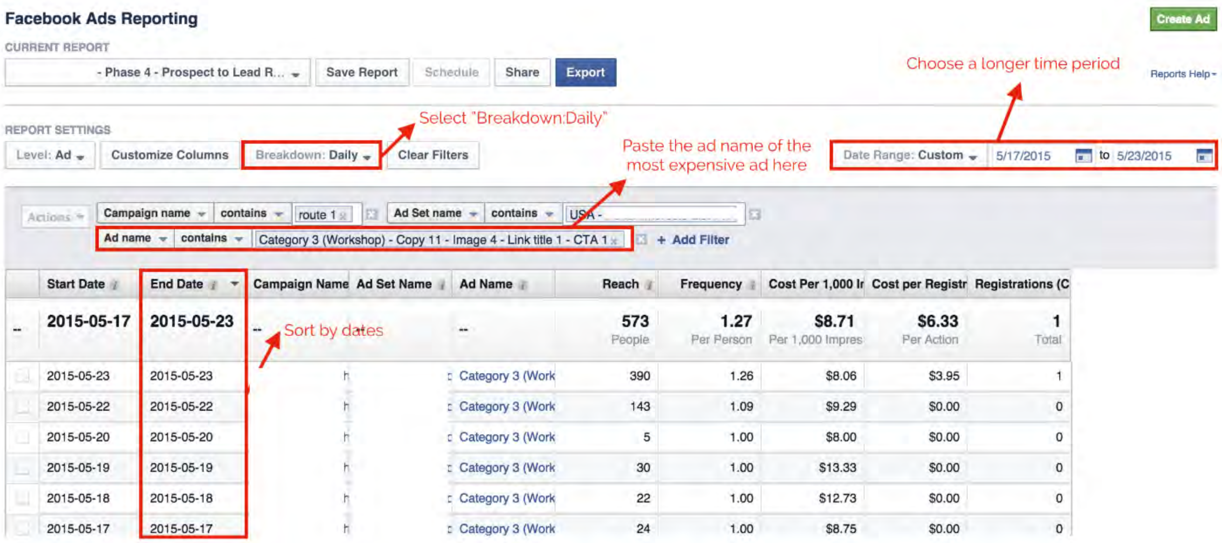
	A	B	C	D
1			All	Sport/Recreation Equipment: Rifle Own
2				
3	All			
4		Unwgtd	48881	5125
5		Weighted (000)	235421	26175
6		Horz %	100.00	11.12
7		Vert %	100.00	100.00
8		Index	100	100
9	Social Networking, Photo Or Video-Sharing Sites Visited In Last 30 Days: Facebook			
10		Unwgtd	26080	2556
11		Weighted (000)	129650	13843
12		Horz %	100.00	10.68
13		Vert %	55.07	52.89
14		Index	100	96

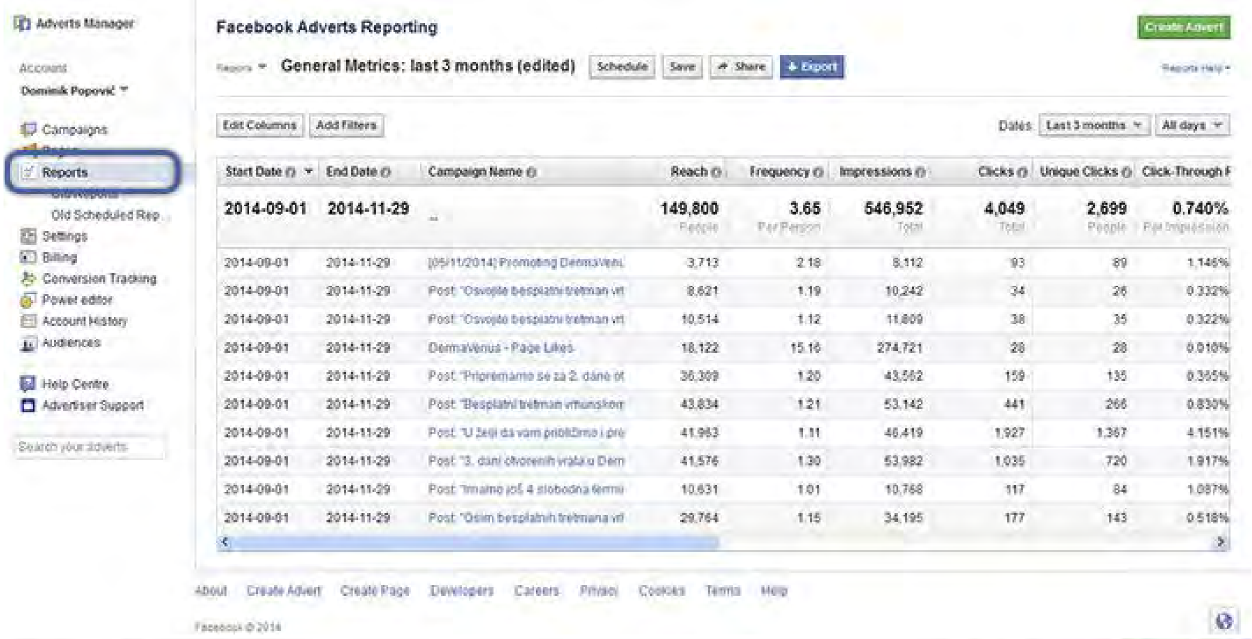
* Projections relatively unstable, use with caution

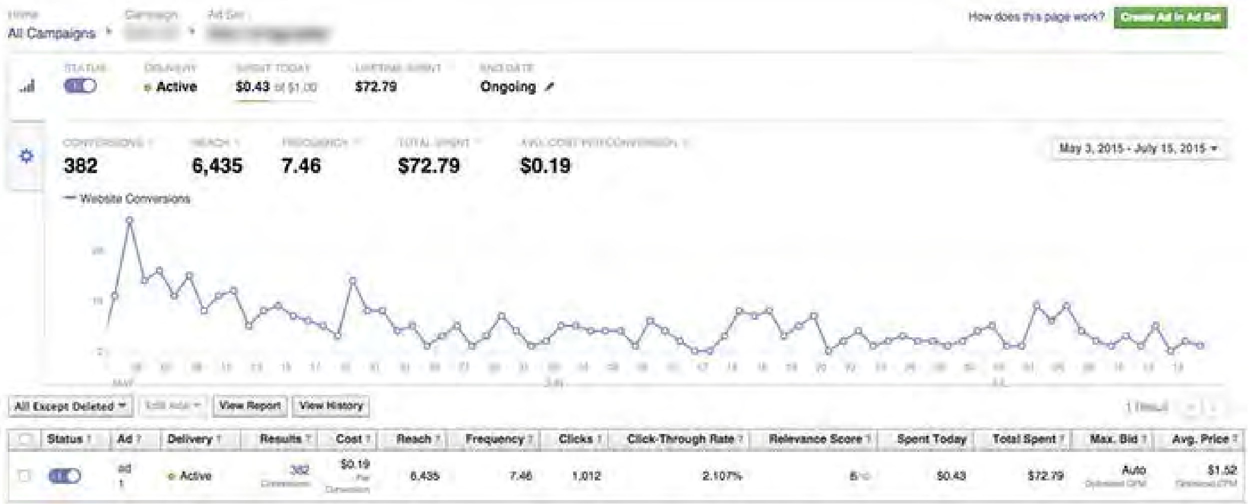
Source: 2014 Doublebase GfK MRI weighted to Population (000) - Base: All
No Audit Report Was Generated

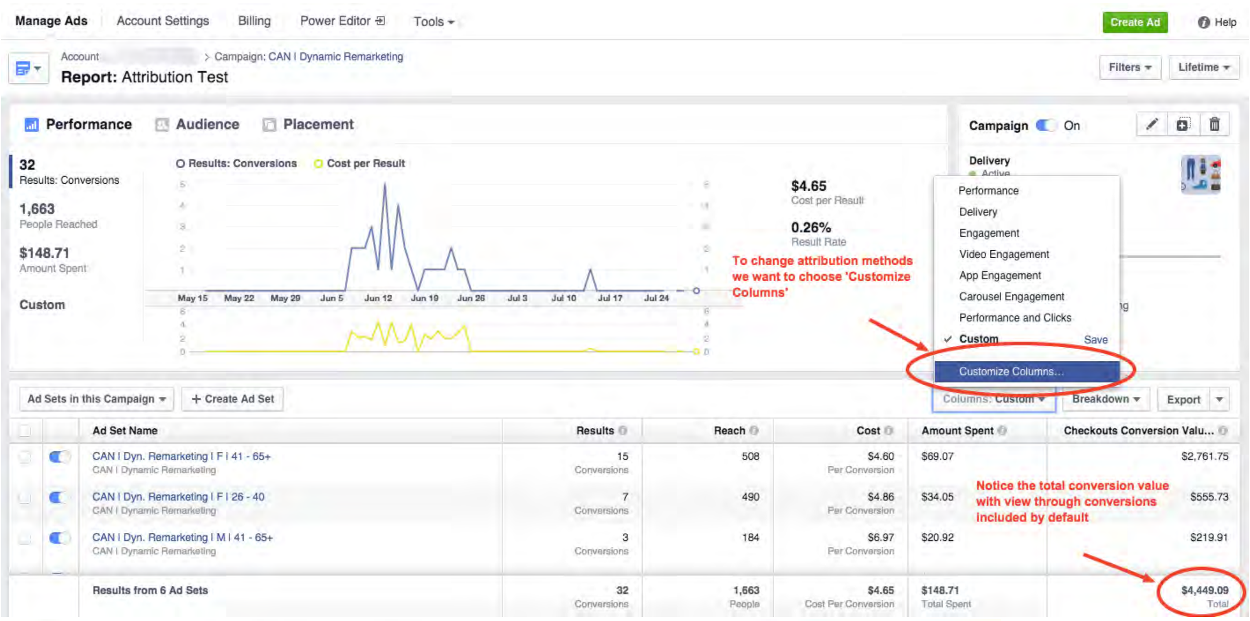
EXHIBIT 20


Campaigns | Reports | Billing | Settings
Create an Ad
All Campaigns
Search your ads
Notifications
The ad was approved.
3 ads were created.
2 ads were approved.
Daily Spend
Today $3.57 USD
10/9 $33.19 USD
10/8 $26.64 USD
10/7 $1.32 USD
10/6 $0.00 USD
Lifetime stats
13 results
Campaign Status Budget/day Clicks Impressions CTR (%) Avg. CPC Spent
Active $20.00 2 147 1.361% $1.09 $2.17
Active $50.00 197 740,872 0.027% $0.78 $153.12
Active $20.00 48 106,924 0.045% $0.78 $37.61
Active $20.00 9 35,525 0.025% $0.72 $6.44
Active $30.00 17 39,888 0.043% $0.86 $14.64
Paused $50.00 165 745,468 0.022% $0.59 $97.64
Paused $30.00 27 64,585 0.042% $0.47 $12.63
View all ads
Help See all
Ads Manager glossary
How can I change a campaign's status or

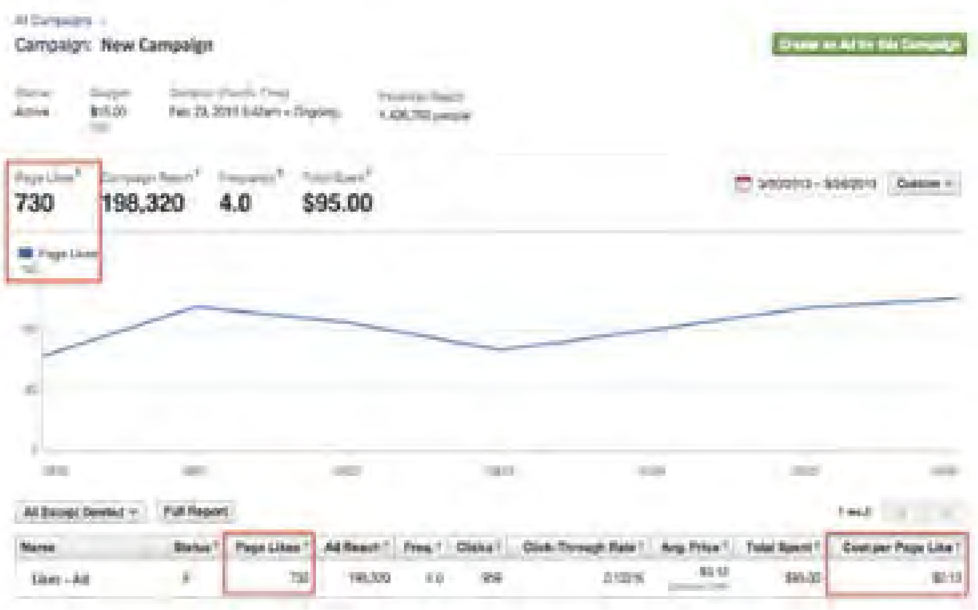

Facebook Ads Reporting
Create Ad
CURRENT REPORT
- Phase 4 - Prospect to Lead R...
Save Report
Schedule
Share
Export
Choose a longer time period
Reports Help
REPORT SETTINGS
Select "Breakdown:Daily"
Level: Ad
Customize Columns
Breakdown: Daily
Clear Filters
Paste the ad name of the most expensive ad here
Date Range: Custom
5/17/2015 to 5/23/2015
Actions
Campaign name contains route 1
Ad Set name contains USA -
Ad name contains Category 3 (Workshop) - Copy 11 - Image 4 - Link title 1 - CTA 1
+ Add Filter
Start Date End Date Campaign Name Ad Set Name Ad Name Reach Frequency Cost Per 1,000 Im Cost per Registr Registrations (C
2015-05-17 2015-05-23 -- -- 573 People 1.27 Per Person $8.71 Per 1,000 Impres $6.33 Per Action 1 Total
Sort by dates
2015-05-23 2015-05-23 Category 3 (Work 390 1.26 $8.06 $3.95 1
2015-05-22 2015-05-22 Category 3 (Work 143 1.09 $9.29 $0.00 0
2015-05-20 2015-05-20 Category 3 (Work 5 1.00 $8.00 $0.00 0
2015-05-19 2015-05-19 Category 3 (Work 30 1.00 $13.33 $0.00 0
2015-05-18 2015-05-18 Category 3 (Work 22 1.00 $12.73 $0.00 0
2015-05-17 2015-05-17 Category 3 (Work 24 1.00 $8.75 $0.00 0


Adverts Manager
Account
Dominik Popović
Campaigns
Reports
Old Scheduled Rep...
Settings
Billing
Conversion Tracking
Power editor
Account History
Audiences
Help Centre
Advertiser Support
Search your adverts
Facebook Adverts Reporting
Create Advert
General Metrics: last 3 months (edited)
Schedule
Save
Share
Export
Reports Help
Edit Columns
Add Filters
Dates: Last 3 months
All days
Start Date End Date Campaign Name Reach Frequency Impressions Clicks Unique Clicks Click-Through R
2014-09-01 2014-11-29 -- 149,800 People 3.65 Per Person 546,952 Total 4,049 Total 2,699 People 0.740% Per Impression
2014-09-01 2014-11-29 [05/11/2014] Promoting DermaVenu 3,713 2.18 8,112 93 89 1.146%
2014-09-01 2014-11-29 Post: "Osvojite besplatni tretman vri 8,621 1.19 10,242 34 26 0.332%
2014-09-01 2014-11-29 Post: "Osvojite besplatni tretman vri 10,514 1.12 11,809 38 35 0.322%
2014-09-01 2014-11-29 DermaVenus - Page Likes 18,122 15.16 274,721 28 28 0.010%
2014-09-01 2014-11-29 Post: "Pripremamo se za 2. dane ot 36,309 1.20 43,562 159 135 0.365%
2014-09-01 2014-11-29 Post: "Besplatni tretman vrhunskom 43,834 1.21 53,142 441 266 0.830%
2014-09-01 2014-11-29 Post: "U želji da vam približimo i pre 41,963 1.11 46,419 1,927 1,367 4.151%
2014-09-01 2014-11-29 Post: "3. dani otvorenih vrata u Derm 41,576 1.30 53,982 1,035 720 1.917%
2014-09-01 2014-11-29 Post: "Imamo još 4 slobodna termi 10,631 1.01 10,768 117 84 1.087%
2014-09-01 2014-11-29 Post: "Osim besplatnih tretmana vri 29,764 1.15 34,195 177 143 0.518%
About Create Advert Create Page Developers Careers Privacy Cookies Terms Help
Facebook © 2014


All Campaigns
How does this page work?
Create Ad in Ad Set
Active
$0.43
$72.79
Ongoing
382
6,435
7.46
$72.79
$0.19
May 3, 2015 - July 15, 2015
Website Conversions
All Except Deleted
View Report
View History
Status Ad Delivery Results Cost Reach Frequency Clicks Click-Through Rate Relevance Score Spent Today Total Spent Max. Bid Avg. Price
ad 1 Active 382 $0.19 6,435 7.46 1,012 2.107% $0.43 $72.79 Auto $1.52



Manage Ads
Account Settings
Billing
Power Editor
Tools
Create Ad
Help
Account
> Campaign: CAN | Dynamic Remarketing
Report: Attribution Test
Filters
Lifetime
Performance
Audience
Placement
Campaign
On
32
Results: Conversions
1,663
People Reached
$148.71
Amount Spent
Custom
Results: Conversions
Cost per Result
$4.65
Cost per Result
0.26%
Result Rate
To change attribution methods we want to choose 'Customize Columns'
Delivery
Active
Performance
Delivery
Engagement
Video Engagement
App Engagement
Carousel Engagement
Performance and Clicks
Custom
Save
Customize Columns...
May 15
May 22
May 29
Jun 5
Jun 12
Jun 19
Jun 26
Jul 3
Jul 10
Jul 17
Jul 24
Ad Sets in this Campaign
+ Create Ad Set
Columns: Custom
Breakdown
Export
Ad Set Name
Results
Reach
Cost
Amount Spent
Checkouts Conversion Valu...
CAN | Dyn. Remarketing | F | 41 - 65+
CAN | Dynamic Remarketing
15
Conversions
508
$4.60
Per Conversion
$69.07
$2,761.75
CAN | Dyn. Remarketing | F | 26 - 40
CAN | Dynamic Remarketing
7
Conversions
490
$4.86
Per Conversion
$34.05
$555.73
Notice the total conversion value with view through conversions included by default
CAN | Dyn. Remarketing | M | 41 - 65+
CAN | Dynamic Remarketing
3
Conversions
184
$6.97
Per Conversion
$20.92
$219.91
Results from 6 Ad Sets
32
Conversions
1,663
People
$4.65
Cost Per Conversion
$148.71
Total Spent
$4,449.09
Total



Campaign: New Campaign
730
198,320
4.0
$95.00

EXHIBIT 21

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http://www.wsj.com/articles/facebook-overestimated-key-video-metric-for-two-years-1474586951

BUSINESS | MEDIA & MARKETING | CMO

Facebook Overestimated Key Video Metric for Two Years

Social network miscalculated the average time users spent watching videos on its platform

By **SUZANNE VRANICA** and **JACK MARSHALL**
Sept. 22, 2016 7:29 p.m. ET

Big ad buyers and marketers are upset with Facebook Inc. after learning the tech giant vastly overestimated average viewing time for video ads on its platform for two years, according to people familiar with the situation.

Several weeks ago, Facebook disclosed in a post on its "Advertiser Help Center" that its metric for the average time users spent watching videos was artificially inflated because it was only factoring in video views of more than three seconds. The company said it was introducing a new metric to fix the problem.

Some ad agency executives who were also informed by Facebook about the change started digging deeper, prompting Facebook to give them a more detailed account, one of the people familiar with the situation said.

Ad buying agency Publicis Media was told by Facebook that the earlier counting method likely overestimated average time spent watching videos by between 60% and 80%, according to a late August letter Publicis Media sent to clients that was reviewed by The Wall Street Journal.

MORE ON MARKETING

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A spokeswoman for Publicis Media, a division of Publicis Groupe SA, referred calls to Facebook. Publicis was responsible for purchasing roughly $77 billion in ads on behalf of marketers around the world in 2015, according to estimates from research firm Recma.

GroupM, the ad buying unit of WPP PLC, also was notified of the discrepancy by Facebook, another person familiar with the matter said.

On Friday, Facebook apologized. “The metric should have reflected the total time spent watching a video divided by the total number of people who played the video. But it didn’t,” said David Fischer, vice president of business and marketing partnerships, in a Facebook post. “While this is only one of the many metrics marketers look at, we take any mistake seriously.”

Facebook had said in an earlier statement: “We recently discovered an error in the way we calculate one of our video metrics.” It added: “This error has been fixed, it did not impact billing, and we have notified our partners both through our product dashboards and via sales and publisher outreach. We also renamed the metric to make it clearer what we measure. This metric is one of many our partners use to assess their video campaigns.”

The news is an embarrassment for Facebook, which has been touting the rapid growth of video consumption across its platform in recent years.

Due to the miscalculated data, marketers may have misjudged the performance of video advertising they have purchased from Facebook over the past two years. It also may have impacted their decisions about how much to spend on Facebook video versus other video ad sellers such as Google’s YouTube, Twitter, and even TV networks.

Media companies and publishers are affected, too, since they’ve been given inaccurate data about the consumption of their video content across the social network. Many use that information to help determine the types of content they post.

For the past two years Facebook only counted video views of more than three seconds when calculating its “Average Duration of Video Viewed” metric. Video views of under three seconds were not factored in, thereby inflating the average. Facebook’s new metric, “Average Watch Time,” will reflect video views of any duration. That will replace the earlier metric.

In its note to clients, Publicis said the change was an attempt to obfuscate Facebook’s earlier miscalculations.

“In an effort to distance themselves from the incorrect metrics, Facebook is deprecating [the old metrics] and introducing ‘new’ metrics in September. Essentially, they’re coming up with new names for what they were meant to measure in the first place,” the memo said.

The miscounting could also fuel concerns among advertisers and media companies about the so-called “walled gardens” that companies including Facebook and Google are often described as operating. Both companies keep a tight grip on data, and only allow limited third-party tracking firms to plug into their systems.

Keith Weed, chief marketing officer of Unilever, said in an interview last year, tech companies that don’t let third parties measure their platforms is equivalent to “letting them mark their own homework.”

The Publicis note said, “This once again illuminates the absolute need to have 3rd party tagging and verification on Facebook’s platform. Two years of reporting inflated performance numbers is unacceptable.”

—Shalini Ramachandran contributed to this article.

Write to Suzanne Vranica at suzanne.vranica@wsj.com and Jack Marshall at Jack.Marshall@wsj.com

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http://www.wsj.com/articles/senators-urge-ftc-to-examine-ad-fraud-1468231200

BUSINESS | MEDIA & MARKETING | CMO

Senators Urge FTC To Examine Ad Fraud

Democrats Mark Warner and Chuck Schumer see echoes of stock market manipulation

Sen. Mark Warner (D. Va) *PHOTO: THE WALL STREET JOURNAL*

By **MIKE SHIELDS**
Updated July 11, 2016 11:55 p.m. ET

Two U.S. senators want to take on the bots.

Democrats Mark Warner of Virginia and Chuck Schumer of New York plan to send a letter to the Federal Trade Commission on Monday asking the regulatory body to examine the persistent challenge of fraudulent ads in online advertising.

For the past several years, as the buying and selling of digital advertising has grown more automated, the industry has grappled with various forms of fraud. For example, scam artists have built networks of bogus websites, where they sell ads and use computer programs—or "bots"—to make it look as though these sites are regularly visited by humans.

In other cases, fraudsters have used software to hijack people's computers and direct web traffic to suspect sites loaded with ads.

The senators, both members of the Senate Banking Committee, noted that the ad industry has undertaken various efforts to stamp out fraud but questioned whether self-regulation will go far enough. "It remains to be seen whether voluntary, market-based oversight is sufficient to protect consumers and advertisers from digital advertising fraud," the letter said.

The FTC's relevance in the matter isn't immediately obvious, given that the agency is generally focused on protecting consumers. On its face, it would seem marketers (companies) are the big losers from ad fraud. A recent study by the Association of National Advertisers estimated that advertisers could waste $7 billion this year on ads no people will ever see.

But the two lawmakers argue in the letter that wasted ad spending will eventually result in consumers paying higher prices for goods and services.

Plus, the more fraud in the online ad business, the more chances that consumers will risk having their personal information stolen, the letter contends.

By creating fake traffic, bots artificially drive up the cost of advertising "in the same way human fraudsters can manipulate the price of a stock by creating artificial trading volume," the senators wrote in the letter.

"Just as federal regulation has evolved to keep pace with the ever-growing sophistication of our financial markets, so must oversight of the digital advertising space," the letter said.

The letter asks the FTC what steps it is taking to mitigate digital ad fraud, and what can be done "to reform opaque advertising exchanges" and "more closely align the incentives of ad tech companies with publishers, advertisers and consumers." The letter also asks the agency for its assessment of the economic impact of fraud on media owners and publishers.

In an interview, Mr. Warner didn't shy away from drawing parallels between the online advertising market and some of the forces that led to the 2008 financial meltdown.

“This is a $60 billion industry, and some of the fraud numbers suggest that 10% of that is being wasted,” he said. “And you’re seeing some of the same tools [we saw] in stock manipulation. This needs to be looked at.”

Mr. Warner said he only recently became fully aware of the ad fraud issue.

“It took the house almost burning down to recognize that there was a problem in Wall Street,” he said. With regards to the complexity of ad fraud, “It took me awhile to wrap my head around it,” he said. “I do wonder whether some of the tech community has swept this under the rug.”

Mr. Warner is hoping to get this subject more out in the open and work with the various constituencies to tackle fraud. While that could ultimately lead to a piece of legislation, that’s not necessarily the goal of this letter, he said.

“I want to still learn, and make sure we’re not making assumptions about the problem,” he said. “That may ultimately lead to a bill, but right now, I’d think companies who have built their revenue on digital advertising will want to get in the boat and help fix this.”

Write to Mike Shields at mike.shields@wsj.com

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Quantifying Online Advertising Fraud: Ad-Click Bots vs Humans

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firstname.lastname@oxford-biochron.com

Oxford BioChronometrics SA

January 2015

Abstract

We present the results of research to determine the ratio of Ad-Clicks that are human initiated against those that are initiated by automated computer programmes, commonly known as ad-bots. The research was conducted over a 7 days period in early January 2015, using the advertising platforms of Google, Yahoo, LinkedIn and Facebook. The results showed that between 88 and 98 percent of all ad-clicks were by a bot of some kind, with over 10 per cent of these bots being of a highly advanced type, able to mimic human behaviour to an advanced extent, thus requiring highly advanced behavioural modelling to detect them.

1 Introduction

In May 2014, according to the Financial Times[1] newspaper, part of a Mercedes-Benz on-line advertising campaign was viewed more often by automated computer programmes than by human beings. It was estimated that only 43 per cent of the ad impressions were viewed by humans. Later, in December, Google made a similar announcement[3] when it stated that its research has showed that 56.1 per cent of ads served on the Internet are never "in view". From our own informal research using existing data from detecting spam-bots, it was thought that the level of bots involved in ad fraud might be considerably higher than was being generally reported. Consequently, we set out to conduct a controlled experiment to answer the following questions:-

1. What is the ratio between ad-clicks charged for, ad-clicks from bots and ad-clicks from humans, and
2. How many different types of ad-click bots can we observe.

2 Internet Bots - what we know

According to Wikipedia[4], an Internet bot, also known as web robot, WWW robot or simply bot, is a software application that runs automated tasks over the Internet. Typically, bots perform tasks that are both simple and structurally repetitive, at a much higher rate than would be possible for a human alone. The largest use of bots is in web spidering, in which an automated script fetches, analyses and files information from web servers at many times the speed of a human. Each server can have a file called robots.txt, containing rules for the spidering of that server that the bot is supposed to obey or be removed.

In addition to these uses, bots may also be implemented where a response speed faster than that of humans is required (e.g., gaming bots and auction-site robots) or less commonly in situations where the emulation of human activity is required, for example chat bots.

There has been a great deal of controversy about the use of bots in an automated trading function. Auction website eBay has been to court in an attempt to suppress a third-party company from using bots to traverse their site looking for bargains; this approach backfired on eBay and attracted the attention of further bots. The United Kingdom-based bet exchange Betfair saw such a large amount of traffic coming from bots they launched a WebService API aimed at bot programmers through which Betfair can actively manage bot interactions.

Bot farms are known to be used in online app stores, like the Apple App Store and Google Play, to manipulate positions or to increase positive ratings/reviews while another, more malicious use of bots is the coordination and operation of an automated attack on networked computers, such as a denial-of-service attack by a botnet.

Internet bots can also be used to commit click fraud and more recently have seen usage around Massively Multiplayer Online Roleplaying Games (MMORPG) as computer game bots. A spambot is an internet bot that attempts to spam large amounts of content on the Internet, usually adding advertising links.

Bots are also used to buy up good seats for concerts, particularly by ticket brokers who resell the tickets. Bots are employed against entertainment event-ticketing sites, like TicketMaster.com. The bots are used by ticket brokers to unfairly obtain the best seats for themselves while depriving the general public from also having a chance to obtain the good seats. The bot runs through the purchase process and obtains better seats by pulling as many seats back as it can.

Bots are often used in MMORPG to farm for resources that would otherwise take significant time or effort to obtain; this is a concern for most online in-game economies. Bots are also used to artificially increase views for YouTube videos. Bots are used to increase traffic counts on analytics reporting to extract money from advertisers. A study by comScore found that 54 percent of display ads shown in thousands of campaigns between May 2012 and February 2013 never appeared in front of a human being.

In 2012 reporter Percy Lipinski reported that he discovered millions of bot or botted or pinged views at CNN iReport. CNN iReport quietly removed millions of views from the account of so-called superstar iReporter Chris Morrow. A followup investigation lead to a story published on the citizen journalist platform, Allvoices[2]. It is not known if the ad revenue received by CNN from the fake views was ever returned to the advertisers.

3 Generally observed behaviour

All bots have a common set of properties. It can be said that a bot:-

- primarily exists, directly or indirectly, for economic gain,
- mimics, to any extent, the actions of a human using a computer,
- repeats such actions multiple times,
- initiates activity,
- executes only the minimum necessary actions to complete its task.

Bot behaviour, at the atomic level, falls into any one the following general classifications (*with examples of type*):-

1. Sends a single message (*Denial of Service Bots, Distributed Denial of Service Bots, Ad Click Bots, Ad Impression Bots*),
2. Sends a single message and waits for response (*Email Spam Bots, Ad Click Bots, Ad Impression Bots, Online Banking Bots*),
3. Sends multiple messages asynchronously (*Denial of Service Bots, Distributed Denial of Service Bots*),
4. Sends multiple messages asynchronously and waits for one or more responses (*Online Spam Bots*).

In behaviours 2 and 4, the sender address (i.e. the IP Address) must be valid for the response to be received (although not necessarily the point of origin), while behaviours 1 and 3 can accomplish their task without this prerequisite condition, making them considerably harder to detect their true point of origin.

4 How the research was conducted

In order to limit the level of non ad-platform bot activity being recorded, individual web pages were created specifically as the click target for the ad, one per ad platform. HTTP GET logging software was enabled for each of these web pages, recording each HTTP GET request that was made to the web server. Embedded on each of the target web pages was a JavaScript library, providing data collection functions to the web page. These functions were designed to record:-

1. Device-specific data, such as the type of web browser being used by the device, predetermined calculations to estimate CPU capabilities, hashing of HTML CANVAS elements to determine screen resolution, etc.

2. Network-specific data, such as the geo-location of the ip address, determining if the ip address was a proxy server, details of the DNS used, fixed-size data packet transmission latency tests, etc.

3. Behaviour-specific data, such as when and how the mouse and keyboard were used for devices that raise mouse and keyboard events, while for mobile devices, recording the data from the gyro, accelerometer and touch screen events.

Each of the three data sets that were being collected from the web page, were sent to their own separate web server using a variety of transmission methods. These were:-

1. Creating an empty SCRIPT Document Object Model Tag element, setting the SRC attribute to the URL of a collection script and parsing the collected data as a HTTP GET parameter.

2. Creating an new IMG Document Object Model Tag element, and again setting the SRC attribute to the URL of a collection script and parsing the collected data as a HTTP GET parameter.

3. Creating a Document Object Model HTTPRequest instance (also known as an AJAX request) to post the data to a collection script on the same server from where the web page was loaded.

Including the server HTTP GET request logs, this gave us in total four streams of data, which were relatively independent of each other, providing us with the ability to create much richer models of ad-bot behaviour and enabling us to create thoroughly-researched ad-bot classifications.

The advertising platforms used were Google, Yahoo, LinkedIn and Facebook. The ad-click budget allocated was around £100 (GBP) per platform, which was the maximum lifetime budget for the ad campaign and was used as fast as possible on each platform.

5 Types of ad-fraud bot detected

While observing the behaviour of bots, we were able to create six classifications of bot types, that we propose as a class of the Kouwenhoven-Neal Automated-Computer-Response Classification System and are described thus:-

Basic - (Ad-Clicks Only) Identified through the difference between the number of Ad-Clicks charged by a specific ad platform, and the number of consolidated HTTP GET requests received for the unique URL that was designated as the ad-click target for the ad campaign running on the ad platform.

Enhanced - Detected through the correlation of a HTTP GET request received by an ad-server for a specific ad, with the AJAX-transmitted record of the web-browser load event. If the recorded load event is inconsistent with the standard load event model, the HTTP GET was made by a bot.

Highly Enhanced - Detected through the use of advanced JavaScript processor metrics. A bot is evident if the client-side code execution is inconsistent with known code execution models.

Advanced - In an elementary attempt to impersonate human behaviour, the page is loaded into the web-browser, but the combination of the length of time that the page is supposedly viewed and the subsequent number and type of supposed user activities show very high levels of inconsistency with our models of normal human behaviour.

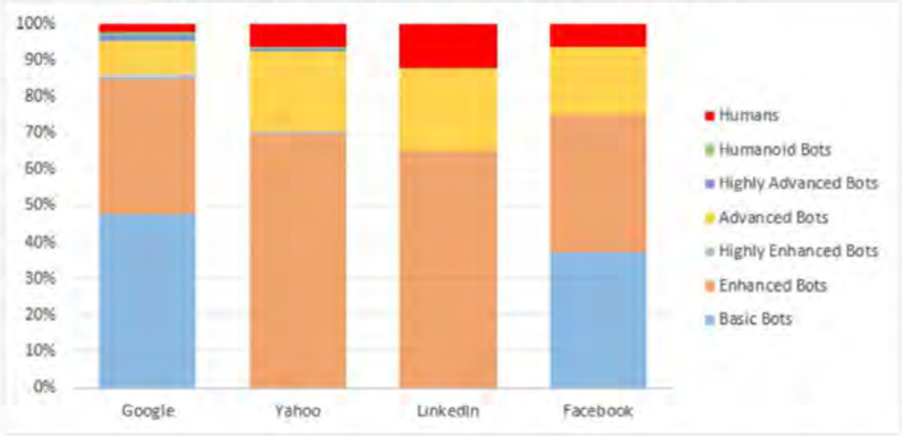
Highly Advanced - A significant attempt at impersonating human behaviour, the bot views the page for an amount of time that would seem reasonable. Both mouse and keyboard events are triggered and the page might be scrolled up or down. However, using cluster analysis, the pseudo randomness is highly detectable.

Humanoid - Detected only through deep behavioural analysis with particular emphasis on, for example, recorded mouse/touch movements, which may have been artificially created using algorithms such as Bezier curves, B-splines, etc., with attempts to subsequently introduce measures of random behaviour, mimicking natural variance.

6 Results

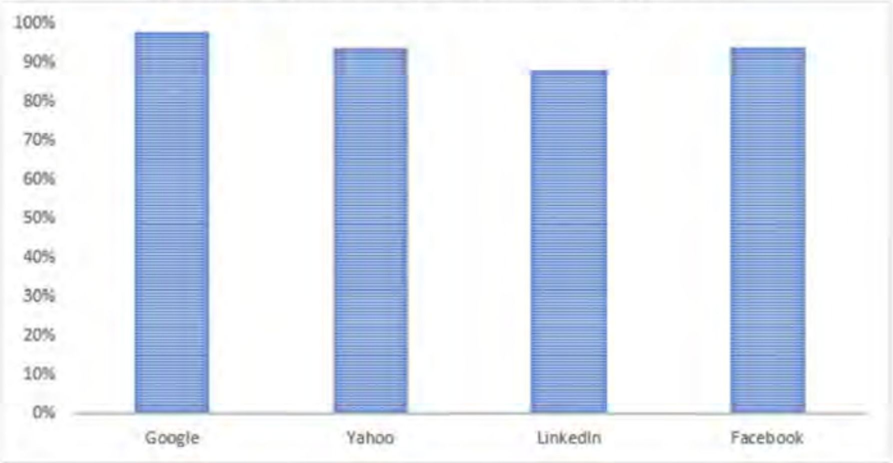
Our research found that at best, 88 percent of the ad-clicks were made by bots on the LinkedIn ad platform, while at worst, 98 percent were from bots on the Google ad platform.

Figure 1: Ratio of Ad-Bot Clicks to Human Clicks


100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Google
Yahoo
LinkedIn
Facebook
Humans
Humanoid Bots
Highly Advanced Bots
Advanced Bots
Highly Enhanced Bots
Enhanced Bots
Basic Bots

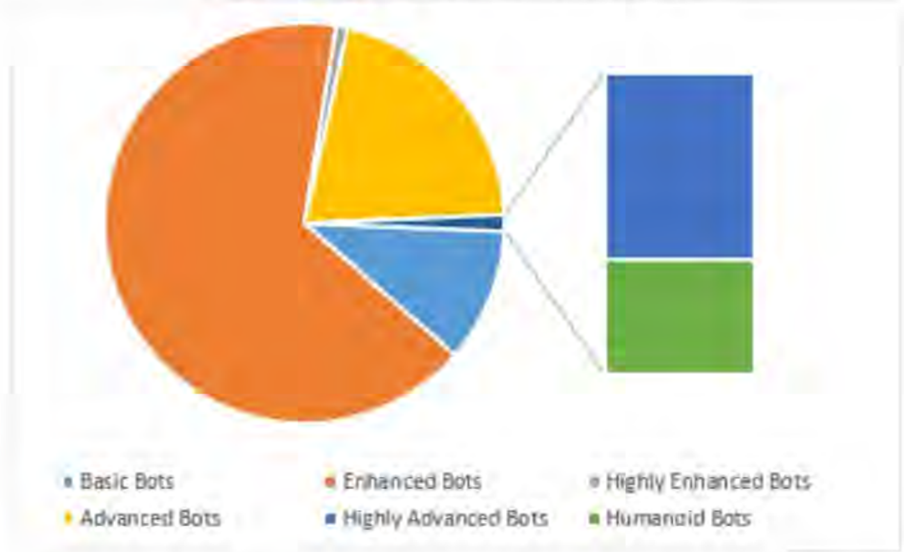
There were no instances where we were not charged for an ad-click that was made by any type of bot.

Figure 2: Prevalence of Overcharging of Ad-Clicks


100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Google
Yahoo
LinkedIn
Facebook

The prevalence of the different types of ad-bot was not entirely as expected. We expected that the majority of bots would be of the basic type and that they would diminish in a linear fashion as they became more advanced. This was not the case, as the Enhanced bot was by far the most widely observed, with the second being the Advanced bot.

Figure 3: Types and Prevalence of Ad-Bots



The limited sample size and duration of this test notwithstanding, these findings are in keeping with our general observations of bot activity through conventional bot detection software, which analyses Internet traffic as a whole on a post real-time basis.

7 Conclusion

There are perhaps few industries where overcharging on such a scale as demonstrated here would be tolerated, but until very recently, the ability to model both human and bot behaviour at the necessary level of complexity (and thus hold advertising platforms to account) was not commercially feasible.

However, with the rise of what is commonly referred to as Big Data, the ability to collect, store and process vast amounts of data in real-time at reasonable cost, while modeling complex human (and human-like) behaviour, has fundamentally changed the balance of power in the relationship between advertisers and the advertising platforms.

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Startup Claims 80% Of Its Facebook Ad Clicks Are Coming From Bots

Posted Jul 30, 2012 by Colleen Taylor (@loyalelectron), Contributor

Image via WanderingStan.com

UPDATED. A lot of people like to complain about their experiences on major web platforms such as Facebook, but most of them stick around as users, feeling that the pros outweigh the cons. But Limited Run, a startup that makes a software platform for musicians and labels to sell physical products like vinyl records, says it has reached the final straw with its experience as a small business advertising on Facebook — and as a result is completely withdrawing its presence on the social networking platform.

The core issue is that Limited Run says it has discovered 80 percent of the clicks it is receiving on Facebook appear to be coming from bots, rather than real people. The company explained the situation in a message on its Facebook page (which Limited Run says it will delete in the coming days) which has also been picked up in an increasingly popular thread on Hacker News:

> *"A couple months ago, when we were preparing to launch the new Limited Run, we started to experiment with Facebook ads. Unfortunately, while testing their ad system, we noticed some very strange things. Facebook was charging us for clicks, yet we could only verify about 20% of them actually showing up on our site. At first, we thought it was our analytics service. We tried signing up for a handful of other big name companies, and still, we couldn't verify more than 15-20% of clicks. So we did what any good developers would do. We built our own analytic software. Here's what we found: on about 80% of the clicks Facebook was charging us for, JavaScript wasn't on. And if the person clicking the ad doesn't have JavaScript, it's very difficult for an analytics service to verify the click.*
>
> *What's important here is that in all of our years of experience, only about 1-2% of people coming to us have JavaScript disabled, not 80% like these clicks coming from Facebook. So*

> *for were from bots. That's correct. Bots were loading pages and driving up our advertising costs."*

More details on the tracking

I reached out to Limited Run co-founder Tom Mango, who provided a bit more context on the situation. Before building their own analytics program, Mango and his co-founder used six or seven outside analytics services including Click and Google Analytics. Those all showed "roughly the same stats" on the client side as Limited Run's own analytics program — that 80 percent of visitors from Facebook clicks weren't registering images from Limited Run's site, which may indicate that it wasn't truly being visited by a person. Next, Limited Run built tracking into the server side of their app, where any URLs coming in from their Facebook ad campaigns were logged to Limited Run's database. Those requests weren't loading any of Limited Run's client side assets, either.

Also, Mango says, those visitors were showing up on Limited Run's servers as "non-standard" user agents. "Essentially they were just not your standard Chrome / Firefox / Safari / IE / iOS user agents," Mango said. "They were things you would see with random crawlers and bots." We asked for more information on these — IP addresses on the purported bots, an example user agent string — and will be sure to update this with anything that Mango sends over.

When Limited Run reached out to Facebook, they say they were met with indifference. "Sadly, Facebook would only reply with automated response about how 'all analytics services track differently' when we tried to confront them," Mango said. "To be clear, we spent roughly a month testing this and confirming everything. This wasn't a weekend project."

Limited Run is making it clear that they don't allege Facebook is at all behind the bots. Mango acknowledged to me that it could just as easily be a denial-of-service type attack from, say, a competitor — who wants to run up Limited Run's advertising bill, knowing the company runs a small, bootstrapped shop. In the end, Limited Run says it's just disappointed that Facebook is not acknowledging the situation or seemingly doing anything to stop it.

The timing question

The timing here may be a bit questionable, from my opinion: This all occurred "earlier this year," Mango told me. So why the wait to publicize the situation? "We've been too busy to post about it until now since our site just launched out of beta a couple of weeks ago," he said. Another reason that the post came today, Mango said, was because Limited Run had another unfavorable interaction with Facebook — the company says it was asked to spend $2,000 on

It's all fair enough, but it's also helped Limited Run get a lot of attention in its first couple of weeks post-launch. Have the major marketers who have been spending millions on Facebook advertising for years simply not noticed such a thing? It's possible, but it would be surprising.

Either way, Limited Run has discontinued its Facebook ads and is now planning to pull itself off of the social network altogether. As far as social networking goes, Limited Run plans to rely on Twitter. "Hopefully others are a bit more aware of what they are or aren't getting out of Facebook advertising in the future having heard about our experience," Mango told me.

A truly people-powered social network

We've reached out to Facebook for comment on this situation, and will be sure to update this with any feedback we receive. **UPDATE:** A Facebook spokesperson emailed the following statement: "We're currently investigating their claims. For their issue with the Page name change, there seems to be some sort of miscommunication. We do not charge Pages to have their names changed. Our team is reaching out about this now."

In the company's earnings call last week, Facebook CFO David Ebersman said that Facebook is actively working on making sure that its social network is populated only by real people — not bots. During the second quarter of 2012, he said:

> *"We refined and improved our methodology for recognizing what we call duplicate or false accounts. These refinements resulted in an increase in our estimate of duplicate or false accounts relative to our earlier global estimate, primarily driven by emerging markets such as Turkey and Indonesia... Since authentic identity is so important to the Facebook experience, we'll continue to try and improve our user management techniques with the goal of ensuring that every account on Facebook represents an authentic unique individual."*

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Adarsh Thampy Follow
Product Manager @ Scripbox
Dec 25, 2015 · 4 min read

What Happens When Facebook Decides to Do Click Fraud?

Click frauds happen in almost all networks.

Ad networks keep fighting click fraud and fraudsters figure out new and ingenious ways to trick the network.

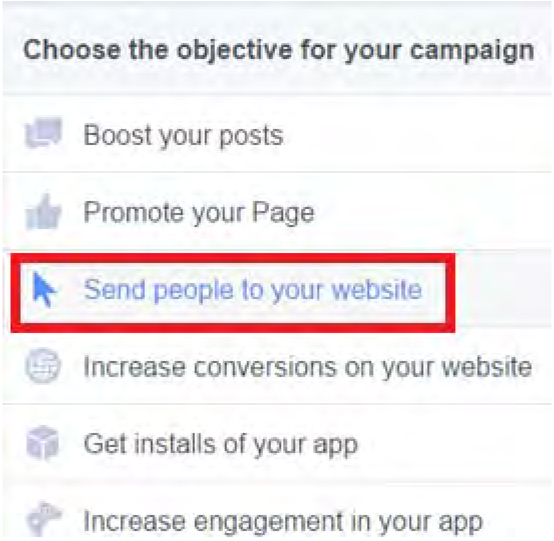
Now, imagine the network does click fraud on its own.

That's exactly what Facebook seems to be doing.

Image credit: Jonathan Thomas.

Here's how Facebook click fraud works

Facebook gives you an option to pay for website clicks.


Choose the objective for your campaign
Boost your posts
Promote your Page
Send people to your website
Increase conversions on your website
Get installs of your app
Increase engagement in your app

You create an ad. Get it approved. The ad goes live. You get traffic.

Sounds simple, right?

I tried to set up a Facebook ad for a smaller budget (INR 1000 per day), and created 4 ad variations. Waited for a day and a half.

No traffic.

I tried to increase CPC and change targeting. Again, no movement.

Finally, I decided to increase my budget to INR 3,000.

Within an hour or so, I get an SMS saying that my credit card got charged by Facebook.

Wondering what happened, I head over to Facebook and look at the reports. Happily enough, I got around 190+ clicks to my website.

41,871
People Reached
192
Clicks to Website
₹8.71
Cost per Website Click
₹1,671.65
Total Spent
Lifetime
Genders
Ages
Placements
People Reached
Women 13,088
Men 28,191
Unknown 592
Clicks to Website
Women 82
Men 109
Unknown 1
Cost per Website Click
Women ₹8.65
Men ₹8.74
Unknown ₹9.91

Since I didn't get any notification of leads (I have a lead capture on my page with a conversion rate of 30%+), I went and checked my analytics to understand what happened.

The links were UTM tagged, so it was relatively straight forward. Here's the screenshot of my Google Analytics.

Primary Dimension: **Source / Medium** Other

Plot Rows | Secondary dimension | Sort Type: Default

Source / Medium	Acquisition: Sessions	Acquisition: % New Sessions	Acquisition: New Users	Behavior: Bounce Rate	Behavior: Pages / Session	Behavior: Avg. Session Duration
	19 % of Total: 31.67% (60)	94.74% Avg for View: 96.67% (-2.00%)	18 % of Total: 31.03% (58)	94.74% Avg for View: 98.33% (-3.66%)	1.16 Avg for View: 1.05 (10.28%)	<00:00:01 Avg for View: <00:00:01 (215.79%)
1. Facebook / social	19 (100.00%)	94.74%	18 (100.00%)	94.74%	1.16	<00:00:01

Now, that's strange.

Facebook says 192 clicks and charges me for it while Google Analytics tells me 19 clicks. That's some seriously flawed reporting.

It could be an error with Google as the rep alleged when I reached out to them.

Your Facebook Advertising Support Request [[redacted]_[redacted]] Inbox x

Wasinee Pimsarn <gms-support@fb.com> 8:48 AM (6 hours ago)
to me

Hi Adarsh,

Thank you for reaching out to us in regards to your report concern. I am glad to explain this matter.

We report on clicks for Facebook ads. Many third-party reporting packages report visits or page views, which may not correspond directly to clicks. Additionally, some third-party reporting packages require that the user's browser have cookies, Javascript and/or images enabled in order to record statistics, which may result in undercounting clicks relative to the clicks reported by Facebook Ads.

Statistics measured at daily intervals may be based on different time zones. For more information, please consult the documentation for your third-party reporting package. Google Analytics documentation related to this issue can be found here: http://www.google.com/support/googleanalytics/bin/answer.py?answer=55610

If your ads link directly to the site you're advertising and you're tracking ad clicks by looking at page visits with facebook.com as the source, it's likely that your statistics will be significantly different than Facebook's reports. This is an expected discrepancy, as many of the visit sources will be lost with this kind of tracking process. In general, analyzing your Facebook ad campaigns by looking at referrer URLs does not provide the most accurate picture, and we encourage you to implement a different solution.

There are a variety of ways to make your website analytics more accurate than relying on referrer URLs. You can link your Facebook Ads to unique URLs that are only used for your Facebook ads campaigns, or add an extra, identifying parameter to your URL. Google Analytics describes their method for this here: http://support.google.com/analytics/bin/answer.py?answer=1033863

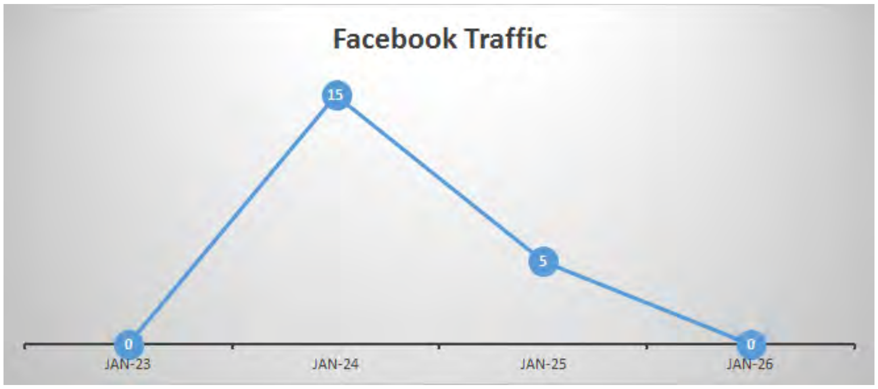
Please note that we aren't able to provide any support or verification for any third-party tracking implementation or data collected.

I appreciate your kind understanding and for your next subject, you can contact us at https://www.facebook.com/business/contact-us/

Best regards,
Wawa
Global Marketing Solutions
Facebook

Basically, what she is saying is—We know our stuff and we are right. Google Analytics is wrong!

Luckily, we are building an Analytics product and we have our tracking on our own website to compare. Here's the data LeadFerry Analytics tracked for Facebook.



Traffic data from LeadFerry Analytics

Hmmm.

Two different software report similar numbers.

Instead of acknowledging their mistake, the rep again tries to blame the issue on Google Analytics and their auto-integration.

When I wanted to escalate the issue, I was asked to submit feedback to the product team.

Nothing about the fake clicks. No acknowledge that something seems to be wrong. My feedback would- perhaps- be used for future product improvements.

Great customer support, Facebook. Well done!

Why is Facebook reporting wrong numbers?

Since the rep is reluctant to accept the mistake and apparently uses copy paste response, it seems they are used to such complaints.

Just do a simple Google search and you will come across several complaints like this and this.

While I don't really know the truth about why Facebook seems to be reporting wrong numbers, I am guessing that they want to entice you to spend money by showing lower CPC rates.

By artificially showing low CPC rates (and inflating the actual click numbers), Facebook can get away with the perception of providing "cheaper" traffic.

What if Facebook is not doing click fraud?

Even if Facebook is not doing this intentionally, they have a big problem at hand.

Whatever the technical reason be, advertisers care about people coming to their site and the money spent along with conversions.

If you are saying 1000 clicks and only 100 people come to my site, I should ideally calculate the ROI based on the 100 visits and the money spent.

This makes calculating Facebook ROI all the more complicated- or do they actually want it to be complicated?

What should advertisers do?

There isn't much we can do.

Don't just rely on the data Facebook dashboard shows you. Use analytics software on your website to compare the traffic and figure our ROI based on actual site visits.

Continue spending money on any channel as long as it gives you positive ROI.

Does this mean we'll stop spending money on Facebook ads? No.

Should you stop Facebook ads? Depends on actual ROI. Look at your business data and see if Facebook has been working for you.

Remember Warren Buffets words of wisdom.

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10M

JUL 31, 2012 @ 01:20 PM 21,470 VIEWS

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Why Do Some Advertisers Believe That 90% Of Facebook Ad Clicks Are From Bots?

Eric Jackson, CONTRIBUTOR
I write about technology and media. FULL BIO
Opinions expressed by Forbes Contributors are their own.

Microsoft Cloud
This cloud opens doors of opportunity.
See the story

To listen to the Facebook (FB) earnings call last week, you would have thought that the management team passionately cares about their users' experience and the care and feeding of their advertising clients.

Image via CrunchBase

Here's Mark Zuckerberg discussing how complex Facebook's internal systems are to track user behavior and the effectiveness of various ad campaigns:

> at any given point, we have a lot of different tests, different algorithms running, and we measure engagement of everything downstream from News Feed and the whole system, right? So obviously, clicks and engagement and feedback in News Feed, how many people want to share, but also how many page views and how much time people spend on Facebook overall, ad performance, everything, down to all of the different tweaks that we do in News Feed, and user sentiment as well. So I think we have pretty robust systems that are built out around this. And one of the things that I think is pretty interesting is what we've seen is that we can put in good sponsored content and have it not degrade those metrics. So that's really what we're trying to do, is we're rolling some of these Sponsored Stories out more conservatively because we want to make sure that the quality is very high. And we're basically continuing to run those tests to make sure that we are producing the best product that we can.

And here is a quote from Sheryl Sandberg on how Facebook is working to give its smaller advertisers the tools to be successful with their Facebook ads:

> our third area of progress has been to make it easier for small- and medium-sized businesses to advertise on Facebook. Local business advertising is considered by many to be the Holy Grail of Internet advertising since the market opportunity is so great. This is proving difficult, however, because small business owners often lack the time or ability to adopt new technology. Facebook is uniquely accessible to

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them. As they typically learn to use Facebook by setting up personal profiles or Timelines, they then discover the value our service can provide them as business owners. Many of the world's approximately 60 million business owners are already Facebook users. Over 11 million businesses already have pages on Facebook. Over 7 million of these pages are actively used each and every month. In addition, hundreds of thousands of small businesses advertise with us. By making it easier to create a business page and run ads, we believe we can increase the number of small and local businesses who use our tools.

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If Apple Didn't Want to Kill Facebook Before ...

Stock Traders To Mark Zuckerberg: Do You Hear Us Now?

SAP*Voice*: How Build a Better Professional Ne

Yet, there are two stories out this morning about small businesses who are frustrated with their Facebook ad experience.

The first was reported in Benzinga (via CNET). In it, the owner complains that Facebook has tried to charge them $2,000 to change its name on its own Facebook page. The analytics are poor and they estimate that 80% of the clicks they get on their Facebook page and Facebook ads are from bots:

> "They're scumbags and we just don't have the patience for scumbags," said musician and label-based company Limited Run when discussing its decaying relationship with Facebook (NASDAQ: FB).... While testing Facebook's advertising system, Limited Run noticed it could only verify about 20 percent of the clicks that were supposedly being converted to users showing up on its Web site. After trying a few analytics services to figure out the remaining traffic, the company built its own software out of exasperation," CNET reported, stating that bots were to blame for loading pages and driving up costs.

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In a second blog post, Erik Larson had similar complaints, only he estimated that 90% of his Facebook clicks were from spambots.

Erik was frustrated when he first suspected he was getting a lot of fake clicks from his campaign and contacted Facebook customer support. Suddenly, the amazing analytics that Facebook has were not available for this advertiser. Here is the response from Neil in Facebook Global Marketing Support:

> we are happy to look into this further if you can provide us with detailed click logs documenting the activity you're concerned about. We aren't able to investigate this further without actual traffic logs. We understand this may be a frustrating process, and we apologize for the inconvenience. Please contact your web hosting company directly if you have questions about how to obtain server logs detailing individual clicks or visits to your site, as we aren't able to verify data collected through third-party tracking systems. In order to assist you further, please include the following information from your server logs:
>
> (A) Raw server logs of all clicks coming to your website, or the total amount of all clicks coming from Facebook, with an explanation of

TRENDING

how you filtered them. These server logs should, at the very least, include:

(1) Timestamp of page load
(2) User agent string
(3) User IP
(4) Exact page loaded, with the parameters passed to the page load if you are doing URL tagging. Please note: a popular tracking method is to link your Facebook Ad(s) to unique URLs that are only used for specific Facebook Ad campaigns. Another tracking method is to add an extra, identifying parameter to your URL. By doing so, you'll be able to isolate visitors who reach your site through Facebook Ads rather than other traffic sources.

(B) Aggregated counts of your clicks.

If possible, please also include the following:
(1) The total number of clicks you received from Facebook, split by day, for the specific time period where you have noticed the click issues.
(2) The total number of clicks you were billed for, by Facebook, also by billable day for the period in question.
(3) A screenshot of your external reporting system showing the total number of clicks received from Facebook.

After some back and forth with the Facebook customer support, and some further digging on his own, Larson sends this response by email:

> The problem is that Facebook misled my company with respect to the inherent value of most of the clicks by claiming that these clicks were comparable in value to clicks in other CPC venues or to clicks by FB users with typical and expected interactions with CPC advertising (emphasis added). To be specific, I believe that about 90 percent clicks you charged us for were worth about 1/1000th of the price you charged us. It also seems likely that your company was aware of this disparity in value, because after looking at the data some more it feels like you must have some sort of algorithm in place that invalidates clicks from these users once they pass a certain threshold, but probably you only invalidate clicks after that threshold, not all the clicks that came before. Even more, that threshold appears to be WAY above what any reasonable advertiser would expect it to be.
>
> Specifically, my gut feel is that you allow valid clicks as long as people click fewer than ~4-6 rapid-fire clicks in a minute, and then after that point you invalidate their clicks within a very short session period, probably around an hour or two, but you do not go back and do what everyone would expect you to do and invalidate the first ~4-6 clicks. Further, I imagine you have a very high threshold for clicks in a day, probably ~40-60 daily, and similar to the rapid-fire clicks you do not go back and invalidate the first ~40-60 clicks. It also seems like you have no algorithm at all based on how many annual or total likes a user has, which is somewhat shocking since combining such an long-term algorithm with a rapid-fire algorithm and a daily algorithm would be the best way to identify 'booklicants' or 'likers' or whatever you want to call this group of users. I'll continue to call them booklicants because from an advertiser's perspective they are as much a creation of your product interface as they are regular people with rational interests.

He goes on to describe his personal story using Facebook ads:

> I started out advertising my external landing pages like a typical CPC campaign. The CTRs and landing page conversions were terrible but my ads appeared to perform better than the average FB ads, so it felt OK, and the demographics of the clicks validated some of our segmentation assumptions. Then since your app and your marketing highly encourage use of ads to market internal FB content, and you

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promise much more detailed data about the users, I spiffed up our FB page and ran my first 'like us' campaign. WOW! Hundreds of people in less than an hour, and the CPCs were 20-30 percent lower! So I did it some more, right then, spent more money, eventually $170 instead of the $30-50 I'd planned on. It was exciting.

Then I did a little bit to try to get engagement from those users, a few posts to the page, and nothing happened. I read more about how building engagement is a skill that requires investment, and I also began to look into sponsored stories. Luckily, in parallel I was analyzing my fan base and discovered they were not what they appeared to be at first. They were mostly 'booklicants' who like dozens of things a day. So I didn't do sponsored stories, I sent you a note asking for my money back. If I had done sponsored stories and managed to get into their streams, then no doubt some of those users would have engaged, because they clearly use FB a lot and I would have been jamming my message in front of their faces...which is what I thought I was doing in the first place, btw. But I bet the competition for those particular streams is relatively intense, not because they are more valuable and more advertisers want to compete for them, but because those people typically like thousands of advertisers, and since I was a small advertiser with an audience comprised primarily of booklicants this would have hit me hardest.

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JAN 31, 2017 @ 12:36 AM

How The Post-Mobile Age Will Affect Your Business

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EXHIBIT 22

Sample Report Google Analytics

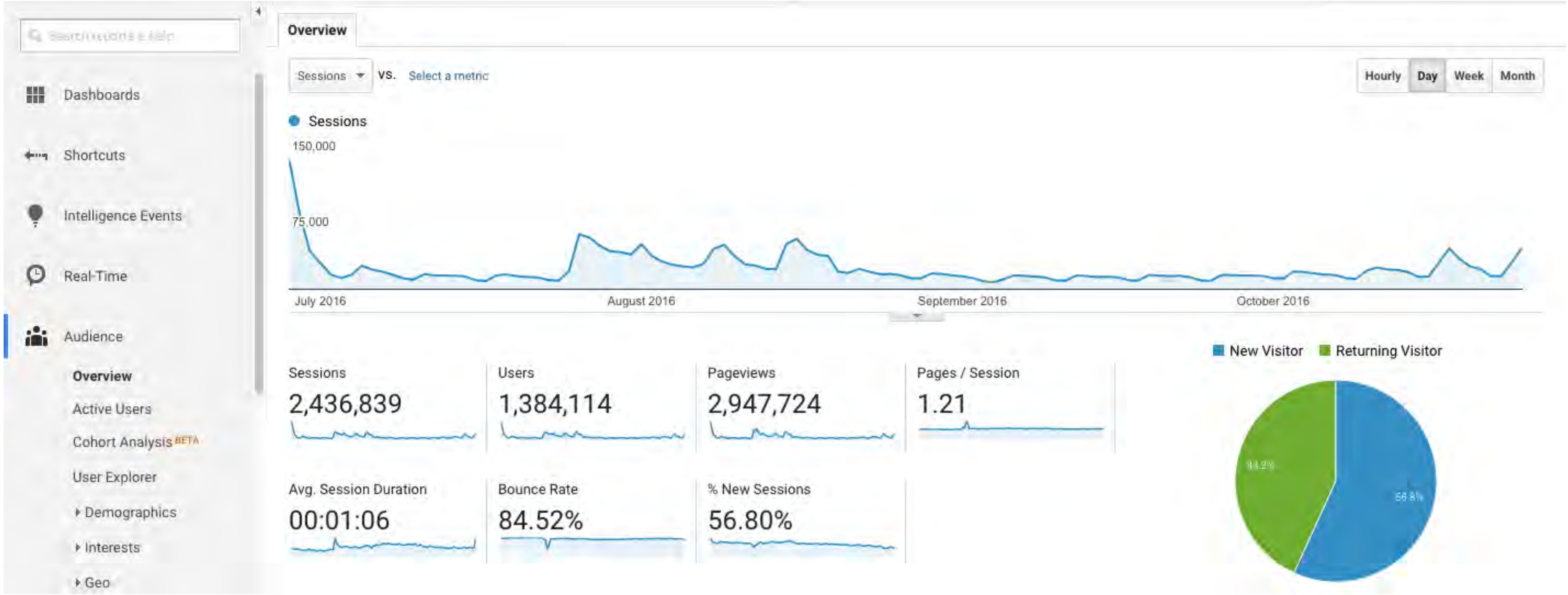
Overview
Dashboards
Shortcuts
Intelligence Events
Real-Time
Audience
Overview
Active Users
Cohort Analysis BETA
User Explorer
Demographics
Interests
Geo
Sessions
VS.
Select a metric
Hourly
Day
Week
Month
Sessions
150,000
75,000
July 2016
August 2016
September 2016
October 2016
New Visitor
Returning Visitor
Sessions
2,436,839
Users
1,384,114
Pageviews
2,947,724
Pages / Session
1.21
Avg. Session Duration
00:01:06
Bounce Rate
84.52%
% New Sessions
56.80%

EXHIBIT 23

Top 50 Brands - Internet Display 2016 YTD

Report Type: Trend
Reported Time Period: 1/1/2016-10/31/2016

BRAND	TOTAL DOLS (000)	Annual Projection
Freecreditreport.com	$160,142.40	$192,170.88
Scottrade	$124,500.10	$149,400.12
American Red Cross	$95,103.80	$114,124.56
Lifelock Identity Theft Service	$88,825.80	$106,590.96
Zulily.com	$83,632.50	$100,359.00
Edx.org	$75,516.60	$90,619.92
State Farm	$59,759.90	$71,711.88
XFinity	$55,341.60	$66,409.92
TD Ameritrade Brokerage	$47,881.00	$57,457.20
Allstate	$47,766.90	$57,320.28
TD Ameritrade	$45,617.00	$54,740.40
E Trade	$40,851.20	$49,021.44
Best Buy Electronics Store	$39,351.50	$47,221.80
Mapquest.com Travel Service	$37,750.30	$45,300.36
Fidelity Investments	$36,842.60	$44,211.12
Capital One	$36,009.70	$43,211.64
SolarCity Energy Service	$35,092.70	$42,111.24
Liberty Mutual	$34,728.20	$41,673.84
Verizon Wireless	$34,539.20	$41,447.04
Lendingtree.com Mortgage	$32,026.20	$38,431.44
Wayfair.com	$31,520.90	$37,825.08
Merrill Edge	$30,947.00	$37,136.40
ShopAtHome.com	$30,256.60	$36,307.92
NextAdvisor.com	$29,416.20	$35,299.44
StyleWe Clothing Store	$27,393.30	$32,871.96
Toyota Rav4 Hybrid	$27,250.20	$32,700.24
AARP	$26,823.00	$32,187.60
Classmates.com	$26,081.90	$31,298.28
Autotrader.com	$25,115.10	$30,138.12
Geico	$24,464.50	$29,357.40
Univision Now	$24,330.20	$29,196.24
Walmart Discount Department Store	$24,031.30	$28,837.56
Microsoft Office	$23,291.20	$27,949.44
Planmeca Fit	$22,913.80	$27,496.56
Rackspace Web Hosting	$22,651.90	$27,182.28
Girl Rising Organization	$22,504.80	$27,005.76
Charles Schwab	$21,577.90	$25,893.48
LastPass	$21,333.60	$25,600.32
XFinity X1	$20,892.70	$25,071.24
CreditCards.com	$20,519.30	$24,623.16

Tableau	$20,512.40	$24,614.88
Home Depot Home Center	$20,471.00	$24,565.20
Trump For President	$19,691.20	$23,629.44
Esurance	$18,984.80	$22,781.76
Santander Bank	$18,928.00	$22,713.60
Kohls Department Store	$18,585.10	$22,302.12
Match.com	$18,436.90	$22,124.28
AmpleHarvest.org	$18,219.40	$21,863.28
Harrys	$18,088.60	$21,706.32
US Department Of The Treasury	$17,566.90	$21,080.28
	$1,904,078.90	

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All media markets not available for entire period

EXHIBIT 24

●●●○○ AT&T 10:19 AM 51%

remingtonfirearmsclassactionsettlement.com

SONICWALL Network Security Appliance

This site has been blocked by the network administrator.

URL: **http://remingtonfirearmsclassactionsettlement.com/...**

Block reason: **Forbidden Category "Weapons"**

If you believe the below web site is rated incorrectly click here.

EXHIBIT 25

Remington Firearms Class Action Settlement

Todd Home 8

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Firearms
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Settlement

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Remington Firearms Class Action Settlement updated their profile picture.

March 14 ·

Remington
Firearms
Class Action
Settlement

Like · Comment · Share

7

Chronological

1 share

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Patrick Zimmerman II hmm. i still want to know who they cought in the woods dressed in all black that the police rook

Like · Reply · May 7 at 10:10pm

Angel Morales Sandy and the Florida gay club shooting. Where even a patron yelled as he had escaped why weren't the cops moving in. Sheeple galore eating it up.

Like · Reply · October 4 at 5:34am · Edited

Write a comment...

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VISITOR POSTS

Bryan Greer
October 16 at 1:04pm

This is just another way for the lawyers to make millions off the backs of poor dumb slobs! You will get nothing from this!!

Like · Comment

Jordan Paul
October 14 at 10:02am

This is ridiculous.

Like · Comment

Franklin Hughes
April 17 at 1:13pm

Sandy hook was faked. No one died. I hope you all know that you're going to burn in hell for your part in this lie.

Like · Comment

Chat (4)

EXHIBIT 26

⚠ WARNING

Rollover Risk.

No School Children
in Van.

removable magnet

EXHIBIT 27

Remington Firearms Class Action Settlement

Todd Home

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Settlement

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Remington Firearms Class Action Settlement
September 27 ·

How well do you know your rifle? Take a moment to find out if your firearm qualifies for benefits from a class action settlement.

How well do you know your rifle?

Check your Remington serial number today

A proposed nationwide settlement has been preliminarily approved in a class action lawsuit involving certain Remington firearms and the replacement of certain trigger mechanisms.

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Write a comment...

Gary Robinson My brorher and I did a remote fly in moose hunt in Qubec. After a morning hunt we were preparing to get into our boat and his 300 mag went off unexpectedly in his hand. I was 10 feet away and in the boat looking away. When i turned around he had bloo... See More
Like · Reply · 3 · September 29 at 5:09pm

3 Replies

Sam Hurst Finally, they knew about this problem years ago. Remington wouldn't do anything to fix the problem. The military stopped using the 700's because of this problem. I won't but another Remington until I know the problem is solved!
Like · Reply · 1 · September 29 at 3:52am

1 Reply

Frank Wayland I read about this a long time ago. Remington decided to save a few pennies per unit, and went with a system they knew to be inferior. I think it was about 15 cents per unit savings, and the engineers warned them not to do it, but they did, and I believ... See More
Like · Reply · October 13 at 7:10am

Dnh Stoll Mine actually does not work correctly, I would call it a delay fire, sometimes it can be 30 seconds. It really depends on the temperature outside. I don't think that makes me an idiot.
Like · Reply · 1 · October 2 at 1:40pm

2 Replies

Michael A. Brodine This is just a Anti-Gun or destroy Remington attempt. I've hunted with this trigger for years. No misfires. If a gun goes off when your pointing someone, that's your fault, didn't control your barrel aim..
Like · Reply · October 17 at 2:30pm

Lanny Boston A recall was issued, this has been on Remington's Web Site for years. So WHO? put up this post and why do they want you to give them your name? Just go to Remington's Web Page.
Like · Reply · 2 · October 13 at 1:32am · Edited

Craig Dorn This is not a made up problem. I have a model 700 in 7mm. Was doing a demonstration on the rente for a hunter safety class and the gun fired

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Like · Comment

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Like · Comment

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April 17 at 1:13pm

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hat (17)

when a clicked the safety off. Pointed safely down range but I still dribbled down both legs. I would not want ... See More
Like · Reply · October 18 at 6:49pm

1 Reply

Betty Carolus I have a remington 30 the only thing i've experienced out of the ordinary is i pulled the trigger on remington brand cartriges and twice the gun never went off so i inspected the cartrige the firing pin made contact but it never went off.That's bad cartriges not bad guns i think its a hoax
I have a few remingtons and have never had any bad luck but will take extra precautions just to be on thesafe side.
Like · Reply · October 10 at 7:37pm

1 Reply

Joe Alspaugh I had one that was on the list (it had never failed) I called Remington, they sent me a postage paid box, I sent it to them, got it back in 2 weeks, still works great, didn't cost me a cent, problem solved!!!
Like · Reply · 2 · October 10 at 7:23am

Todd Kupferer Hey, let's make these freaking lawyers rich. No one gets anything from a class action lawsuit except the law firms that bring them on. They are a bunch of bottom dwelling f$!@#.
Like · Reply · 3 · October 15 at 2:34am

2 Replies

Mark Runk Only a liberal would expect money for nothing. And for what you 12 dollars or something insignificant and run the gun mfg out of buisness over your 12 dollars. Liberal logic at its best for fools who don't know tear ass from a hole in the ground.
Like · Reply · 1 · October 1 at 8:18am

1 Reply

Bill Beard Remington makes excellent firearms contrary to what lame stream media likes to say . Just more anti gunners looking to harm our gun makers for their ratings.
Like · Reply · 1 · October 23 at 9:38am

John Powers I'm sorry even if there's a problem with the safety on this rifle the model 700 bolt action is still one of the best just get it fixed simple
Like · Reply · 2 · October 21 at 10:09am

Frank Crenshaw My 700 in 308 went off once. It was pointed in a safe direction, and freaked me out, but other than that one incident, it's been fine. I'm never comfortable when using this rifle though. I'm going to send it in.
Like · Reply · 1 · October 15 at 11:02am

2 Replies

Daniel Martin Just don't buy a damn Remington bolt action rifle, or any Remingtons for that matter. Since they took over from Marlin, the marlin lever guns have become junk.
Like · Reply · October 21 at 9:51pm

1 Reply

David Palmaro I got rid of my 700 7mm mag, it was a death trap, that God, I used prpoper gun saftey always, never point the barrel, at any one, gun went off so many times.
Like · Reply · October 13 at 10:29pm

1 Reply

Leon Swiger I might go on its a scheme to find out who as firearms. But there was story on 60 minutes a couple years back and there is videos on line show some of them that has blowed up. if you afraid of people finding out get a gunsmith to do it and pay cash for it
Like · Reply · September 30 at 12:36am

2 Replies

Michael A. Brodine All that legal B.S. Is just what it is, I've owned up to 6 model 700 at one time and still own 2. I have one with a trigger block and one without. I consider both safe because I'm smart enough to know what I purchased, understand the the rifle including triggers and practice "don't point a gun at something you don't want to shoot." I feel sorry for Remington, there are others.
Like · Reply · October 12 at 10:54am

Jack Gilbert I wouldn't have a Remington rifle if I had room for Texas. I have my stepfather's pre-64 model 70 in 35 Whelen and my pre-64 Featherweight in 30-06. The other centerfire is a .270 based on a 1909 Argentine Mauser action. The only Remington I own is my Dad's 870 Wingmaster and it is old--made in the 1950s and it's a dandy.
Like · Reply · October 14 at 12:45pm

Allen Buher If you have a problem why not go to Remington directly or sue them yourselves if they don't fix the problem? When classaction is involved this antigunners looking to shut the company down.... eat SHIT ASSHOLES!

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Chat (17)

Like · Reply · October 18 at 4:34pm

Doug Brownlee I had a Remington 700 it was a new 7mm mag the chamber looked like it was machined out of cast iron and I could not get the groups under 2inches at 100 yds. After two weeks I took it back to the store I bought it from and told them I would like to trad... See More

Liked | Message | Saved | More

Like · Reply · October 10 at 8:20pm

D. M. Watson ...this is a real issue. Releasing the safety on some of those guns will cause the striker to fire. There have been deaths attributed to this unfortunate circumstance.

Like · Reply · September 30 at 4:08pm · Edited

Martin Henriks Excuse me, but what can't people understand about "Be Careful", whether is guns, ladders, cigarettes or drugs. We are training a nation of blamers instead of accepters of responsibility. We are doomed, and already declining.

Like · Reply · October 20 at 12:32am

Lee Cerny Had one. Sold it at an auction. I thought it was dangerous because every time you took the safety off had you pulled the trigger it would fire. Almost shot my friend that way. Dump that gun

Like · Reply · October 18 at 11:06pm · Edited

Richard Schnitzler I am Ricks wife ,My husband had a Remington that miss fired ,safety failed , shot him in the foot , he was luck to keep his foot , attorneys that represents Remington did NOTHING , we sent his gun off for "their guys" to have it inspected and we were n... See More

Like · Reply · October 23 at 1:52pm · Edited

Ralph Shaw Check your serial number ; if it qualifies as needing repair then get it repaired or replaced !! REMEMBER THIS : GUNS DO NOT COME WITH AN ERASURE;
If you accidentally shoot some body with a high powered rifle
You can't un do it !!!!!.........,

Like · Reply · 1 · September 30 at 10:35am

Rob Sherwood Best way to check it,have an attorney hold the open end of the barrel while looking down it. Bolt a round in place. If it didn't discharge it's fine.

Like · Reply · 2 · October 23 at 10:51am

George Parsons if remington had fixed the problem....no the dumbasses wanted to point the finger of guilt on the user....just fix the damn problem. yes it will cost money but you have ruined the reputation of a damn fine rifle.

Like · Reply · 1 · October 21 at 11:08pm

1 Reply

Bill Bares I never had a problem with mine but my sister has I just thought it was just her I'll have to check this out if they are willing to fix it for free that's great

Like · Reply · October 24 at 9:20pm

John Grossen it's about time they recognized the issue... nearly had a couple of guys shot at deer camp when a guy unloaded his 700. I won't take part in a lawsuit either, just fix the problem.

Like · Reply · October 21 at 2:30pm

1 Reply

Kevin Grantier WOW, I own a .338, .300, & a .7mm RUM, I also have a the .308, .223, .204 in the VTR module and I have not one problem with any of my weapons. I have had the triggers worked on on by the .338, .300 & 7mm and had the triggers worked on them due to my partial severed trigger finger but have NEVER had any type of miss fire of any type.

Like · Reply · October 13 at 4:26am

Kent Blodgett I use to own 2 model 700 ADL CUSTOM KS, A 280 rem. And a 7km mag. Both custom shop guns. Half the time I closed the bolt they fired without touching the trigger. When I was hunting I was shooting at a deer and the bolt does not lock with the safety on. And the gun did not fire. Deer got away and it was trophy buck. I will never own a Remmington again. What a dangerous piece of junk. These were expensive rifles.

Like · Reply · October 19 at 1:10am

2 Replies

Doug Fiely Its bullshit. Remington put out a bad product and they need your gun for 12 weeks te remedy their mistake. I am not happy with Remington at all over this.

Like · Reply · 1 · October 23 at 7:48pm

Richard McAllister Mike McAllister Remington paid to have it rebuilt years ago I sent it to a rebuilder in Ohio the job was well done but you may still be eligible.

Like · Reply · October 3 at 5:19pm

Rick Hutson My Remington 700 will fire with the safety on when you close the bolt !!! It is in the same serial number range as the ones that are affected, the other one I own have a timney trigger without the problems !

Like · Reply · October 12 at 10:11pm

2 Replies

Chat (17)

Sherry Dwaine Griffith Dumb operators. Set too light or never clean them causing the parts to gum up, then the safety fails to do its job. Used the Remington 700 for 45 years and if there were trigger problems it was my fault.
Like · Reply · 1 · October 10 at 6:36pm

Liked | Message | Saved | More

2 Replies

Tom White They are just trying to find out who had one, then if Hillary makes it she is going to take them all away from us. Then we are doomed!
Like · Reply · 2 · October 3 at 5:09pm

1 Reply

Mark Mackey Clean the trigger group good with a good cleaning agent. Do not at any time oil the trigger group. Happy shooting. 6 to 9 moth turn around for manufacture repair....
Like · Reply · October 21 at 6:52pm

Billy TruMan When the Ambulance chasers are put out of business, this BS will also stop. Some claims may be legitimate but should also be limited to repairs only.
Like · Reply · October 20 at 7:42am

Dean Smith I put a muz brake on it because I broke my shoulder also have the 300 altry both have brakes the 7 mm is the one with the bad trigger I had williams do both of them both are very good guns the 300 A is very wicked thanks for the info
Like · Reply · October 24 at 4:05pm

Poppa Kil It's about damn time!!! That trigger mechanism has been defective for decades! That one reason is why I own a Winchester, but no Remingtons.
Like · Reply · October 1 at 5:07am

Bill Difilippantonio Sr. This was around almost a year ago or longer. I checked mine out right away on the web site and was not on the list. I have fired it many times since and not one problem.
Like · Reply · October 18 at 4:39pm

1 Reply

Michael Groves It's about time that they recalled there problem. To bad people had to die before they got it together. Shame on you Remington. I will never buy anything you make again!
Like · Reply · October 24 at 1:41pm

2 Replies

Matt Brainard I've never had a problem with Remington once idk how they make them now but back in the day they where the best made guns u could buy
Like · Reply · 1 · October 14 at 9:10am

Ronald Baney I have a 270, 243 and a present bought 308. Never any trouble with any of them. Best Damn production gun on the market oldest gun maker in America. And what about your serial no. My 243 has a Timney adjustable trigger. And true anything mechanical can fail after time. So your claim is nothing to get your drawers in a twist. Enjoy your time shooting.
Like · Reply · October 15 at 4:17pm

Betty Yeakle Don,t have one so not at all. I know it knocked me on my rear when I was three. It was my brother,s and he said it wouldn't,t hurt me. He lied.
Like · Reply · October 18 at 4:26pm

Larry Mohn I have an older 308 Winchester rifle and a Remington 700 mm magnum both excellent guns but I've heard these newer 700 snipers will go off without touching trigger cheaply built these days buy older guns the barrels were made from quality steel tempered right and also made in the good old U S A 😜
Like · Reply · 1 · October 1 at 9:22pm

Dee Buck After shooting a hole in the floor board of my pick up and a day later having the 700 go off before I was ready to shoot I took the gun to a gunsmith and he repaired it as it had a defect.
Like · Reply · October 19 at 8:04am

Mark Lucas Worked with them today, after learning the terms and conditions. The shipping and delay time just to get another cheap trigger I ain't going to do it!

The Powder metal trigger parts are not of a very good quality.. some my say unsafe!... See More
Like · Reply · October 21 at 8:02pm

2 Replies

Dave Tipton Didn't Feistein say that she wanted to shorten the bolt levers? That looks like an "Assault Bolt Lever" to me.
Like · Reply · October 12 at 8:43am · Edited

1 Reply

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Chat (17)

Remington Firearms Class Action Settlement

Todd Home 3

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Bret Somers Firearms should NEVER be pointed at something you wouldn't mind putting a hole in. Ever. If it malfunctions, it should be sent to the manufacturer for repair. Frivolous lawsuits, pushed by ambulance chasing attorney's are killing our manufacturing, jobs, and our country.
Like · Reply · 8 · October 19 at 9:11am

Anthony Olsen How about instead of being sue happy you send your rifle in for the repair, get your 40% off coupon for the Remington store get your rifle back and be happy.... stupid ass people. Or upgrade to a Jewell or timney trigger. No need to sue anyone that's the problem with everyone now!
Like · Reply · 8 · October 23 at 2:34pm

2 Replies

Geno Clemans Remington....I have many of your 700's...and Several Model 7's.
They all are Excellent Rifles and the Triggers..all work great....Including several with the X..Mark Pro...None have ever failed me....Here in the States...or Namibia Africa.
Thank you for making Excellent Firearms...especially the Model 700 and Model 7.....
Like · Reply · 3 · September 29 at 5:14am

James West This makes me angry. As a gunsmith I have had a chance to look at many of these "defective" mechanisms. My findings are that most of the time, people had tried to lighten their own triggers, not understanding the full extent of the process. Others I ha... See More
Like · Reply · 7 · October 14 at 10:39am

1 Reply

Mitchell Hollis I've been a gunsmith for over 25 years, and I've serviced hundreds of model 700 rifles, ranging from 1962 to current production.
And the only unsafe rifles, and pistols I've seen are the ones owned by people that do things with their weapons they shouldn't,and not doing the things they should. End of story
Like · Reply · 6 · September 29 at 10:53pm

Rob Blanker My first high powered rifle was back in 1990 when I purchased a Remington 700 ADL in 30-06, it has been an outstanding accurate rifle. I have

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October 16 at 1:04pm

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Like · Comment

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This is ridiculous.

Like · Comment

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April 17 at 1:13pm

Sandy hook was faked. No one died. I hope you all know that you're going to burn in hell for your part in this lie.

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hat (12)

also bought a new Remington 700 BDL SS, in 30-06, another fantastic accurate rifle.
Like · Reply · 5 · October 16 at 12:18pm

Michael Sanderson I wonder how many people read their manufacturer's owners/operators manual. Sad, people will buy a deadly weapon, and don't even bother to read the supplied literature to ensure safe operation of their newly purchased firearm.
Like · Reply · 2 · October 2 at 3:12am

4 Replies

Brian Oberle The trigger recall is not anything new. I replaced mine with a Timney a couple years ago. It's...magic. And no need to ship my rifle off and let whoever fiddle with it.
Like · Reply · 5 · September 30 at 10:24pm

1 Reply

Brian Carter F off!
The only thing wrong was the idiots who pointed their rifles in a unsafe direction.
So many million R700 rifles in circulation and you are worried about the fringe owner's rifles in various states of questionable maintenance or bubba gunsmith... See More
Like · Reply · 10 · September 28 at 9:59pm · Edited

2 Replies

Richard Schnitzler I am on my husband's cell .My husband had a Remington the safety failed him and he was shot in the foot ! He had every bone in his foot broke and the side blew out plus the huge hole that a lemon could have got in ! Thank God he healed ok , his foot of... See More
Like · Reply · 3 · October 3 at 10:53pm · Edited

3 Replies

Bryan Almas Well I'll leave my 2 cents worth here as my family has been shooting remington 700 models sence they came out adl bdl sps all models we have purchased. Anywhere from 223 up to the 300 wm. All have been flawless out of the box until this year... I purch... See More
Like · Reply · 2 · October 9 at 6:48pm

3 Replies

Mitchell Hollis Total BS.....
There is nothing wrong with the Walker trigger. Except the person operating it. There is only 2 possible ways for this to happen. If you fool around with the adjustment screws,without knowing what your doing, your asking for trouble, or ... See More
Like · Reply · 3 · September 29 at 10:49pm · Edited

Mark R Unruh This wepon is a killer I had one if you took you're safty off the gun would go off .I had this happen to me twice in the same day .that gun was sold to a gunsmith for a rugar .I have always owned RUGAR riffels and have never had a problem .now I have 6 rugars .
Like · Reply · October 16 at 4:29pm

4 Replies

Kenneth Byrne I have worked on these rifles for 20 years the only problem I have ever saw is when someone that thinks they know how to set a 18 oz trigger mess with them. Never had any in my whole family ever have problems with Remington rifles
Like · Reply · 1 · October 14 at 3:25pm

Clinton Morrill It's a set up, I have 9 of that model in all calibers and never had a problem with thousands of rounds. Their finding out where guns are and who has them, wise up people.
Like · Reply · 3 · October 21 at 10:30pm

2 Replies

Nick Haulotte The old guns are built like tanks and fiction for years and years and years. U can pass them down from great grandfather to father to son to his kids and then his kids kids and maybe there kids before it's time to be replaced . Same with ammo. Ammo doe... See More
Like · Reply · 1 · October 18 at 8:08pm

2 Replies

Ron Bennett Agreed James, they can go off on their own. I just bought a Howa-Hoag in 30-06 with some good glass, the last 700 I own is for sale, I dont trust that rifle or even the new ones they make. I've owned at least 20 rifles and shotguns in their name, I hav... See More
Like · Reply · October 15 at 10:05pm

John Richards This can be directly attributed to a CEO (Tom MILNER) who was informed many years ago by the gentleman who designed the 700 that he discovered a flaw in the firing mechanism,and that it should be recalled which Mr MILNER did not need,only after several... See More
Like · Reply · October 17 at 1:25pm

Liked · Message · Saved · More

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Product/Service
Like

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Chat (12)

Ron Bennett I had 3 different discharges with a Md. 700 that was made in the 70's. It was a 22-250 w/ a bull barl. One discharge was a near accident with a good friend. I reported it, and sold it, and party was aware. I have a Md 700 still in 30-06, I worry alot about all the time. For you non-believers,,,Trust Me, it happens, I have no reason to lie, and dont want anyone hurt.

Liked | Message | Saved | More

Like · Reply · 1 · October 15 at 9:52pm

Ron Bennett Let me tell you something Robert A., I have no reason to lie to you, and I always loved the Md 700. My 700 in 22-250 misfired 3 times on me, and one was a close call. Truth! I just sold my last one, moving on to others I can trust.

Like · Reply · October 20 at 4:40pm

Allen Clemons Mine qualifies, but they wanted me to send in the whole gun over a trigger. Would not just trade triggers. So I bought a jewel and use it. I will trade them triggers anytime but they aren't getting me to completely tear my gun down.

Like · Reply · October 11 at 1:47pm

Mark Smith I had a model 700 7mm
Mag that fired a round when I lifted the bolt to eject a cartridge.
Left hand on the fore grip, right hand on the bolt. Picked the bolt up and boom.... See More

Like · Reply · 1 · October 18 at 10:44pm · Edited

7 Replies

Randy Lobdell I won't buy Remington either here,s why I live less than 35 miles from the plant when the nysafeact passed rem said they would move instead they stayed cause they took over a million dollars from Cuomo to stay Remington stabbed every 2nd amendment supporters right in the back

Like · Reply · October 11 at 9:58pm

1 Reply

Clay Mounts I shot through the bottom of my tree stand cause I flipped the frigging safety off and about blew my foot off and the bad part is no body would believe until this article came out

Like · Reply · 1 · October 11 at 2:41am

Robert Fabela Part of the reason I will never buy a Remington firearm ever, from their Remington 700s having KNOWN issues with triggers going off with bolt handling, to the sloppy manufacturing of Remington 870 express's with bad shell extraction, to the jamomatic w... See More

Like · Reply · October 16 at 9:12am

Tony Mcknight i have 2 remington rifles in question and they offered me a $12.50 coupon for remington items. i still cant use one of the guns.no replacement of trigger

Like · Reply · October 17 at 12:19am · Edited

2 Replies

Davy Hulett I own the Remington model 700 30 06 there is a recall on the faulty trigger however they say mine isn't under the recall . It could fire on its own at any time and has done it twice and it just sits in my gun cabinet b/c I'm scared of the gun .

Like · Reply · October 24 at 7:36pm

1 Reply

Hunter Brotherton I won't own a Remington because of all the people the gun hurt or killed and Remington still claimed the gun was safe and wouldnt recall them without being forced to, its not a trigger problem it's when you flip on/off the safty or open the bolt it fires the rifle.

Like · Reply · October 11 at 5:39am

1 Reply

Michael Kirkland Not happening I will keep my wore out ole weapons. The new Remington workers make some junk I would not even shoot. Just my thoughts from and ole machinists .

Like · Reply · 2 · October 3 at 8:48am

Tom Rich I don't know what's going on with them. Their QC as of late is not very good. Since they took over Marlin now Marlin is almost junk....buy anything new from them you better check it over really well...

Like · Reply · September 28 at 10:57pm

Daniel Holder I don't really want to send mine back but it has gone off when I shut the the witch is not a good thing. I wonder if I just buy the trigger I want in it and be done with it cause I like my trigger pull I have on it now

Like · Reply · October 1 at 3:09pm

1 Reply

Bill Millen I have a Remington 700. It was part of the recall. They sent me a box and paid the shipping to them. I had my rifle back in 2 weeks.

Like · Reply · 2 · October 9 at 11:30pm

Tommy Abella Alex Abella you should check your serial number could be entitled to some stuff from Remington even though we replaced your trigger.

Chat (12)

Like · Reply · October 18 at 4:42pm

Liked | Message | Saved | More

Roger Backus I had a model 70 win discharge when taking the safety of almost shot my buddy. I only shoot savages now.
Like · Reply · 1 · October 16 at 10:17am · Edited

Richard Taracka This is an old lawsuit that involved the Walker Trigger. My Remington's all have Walker triggers and they work great. To be honest I think it's a bunch of BS and Remington just wants to get this issue behind them.
Like · Reply · 1 · September 30 at 2:41pm

Joe Allsup Only a Remington rifle that is manufactured by Georg Sorros the owner of Remington would put you in a lawsuit ! Be a real owner and purchase a Sako or Browning .
Like · Reply · October 15 at 11:26pm

Bob Cary This gun looks like the bolt comes down right next to the trigger. So if you bump it the gun could fire, before you put the safety on. NOT A SAFE GUN TO BUY.
Like · Reply · October 24 at 2:35pm

2 Replies

Ale Tucker Wish I still had the Remington rifle I got shot with and put me in a wheelchair...so I could check...that was 36 years ago...the gun had a faulty safety....
Like · Reply · October 14 at 11:53am

Bill Lundy I don't buy Remington rifles. Their shotguns are fine.I own several; their rifles I do not own.Too many flaws and problems from way back.Just my opinion
Like · Reply · October 9 at 6:28pm

Charles Hajko i no longer own a remington...i had my beautiful remington mod 700 classic in 270 caliber stolen from me in divorce court by a Left Wing Liberal Judge & lawyer.
Like · Reply · October 21 at 11:43pm · Edited

James Adams Doesnt matter what kind of gun caused problems. Its the dumb people who leave chambers loaded And have no respect for it then end up getting killed.
Like · Reply · October 10 at 7:25pm

1 Reply

Scott L. Service Been shooting and hunting with Remington rifles for 30 years--never had any problems with the trigger mechanism on any of them.
Like · Reply · October 15 at 3:17pm

2 Replies

Danny Harrison I sent mine back last year as soon as the recall started.
It took about six weeks. In plenty of time for gun season.
It doesn't matter what Caliber, just go on line.
Like · Reply · September 30 at 6:07pm

Bill Wright My Remington 700 is a tack driver. Never gave me an issue. Ever....
But has the bad trigger. Which I love. Hope the upgrade is as crisp.
Like · Reply · September 30 at 7:28pm · Edited

2 Replies

Jon Hoffer Never owned one of those pieces of crap but wish I New the number of the one my buddy had over his shoulder and damned near blew my head off! On the sling, never touched it, BANG!
Like · Reply · October 16 at 3:35am

John Frenzel I bought a model 700--didn't like the trigger-the cocking piece-and the stock--so it carries a Shilen trigger- a Bell stock, and a Gentry cocking piece--shoots great- and I didn't have to pay some lawyer to sue some body-
Like · Reply · 1 · October 11 at 12:52pm

James Wewerka Empty your gun...rack bolt to fire weapon....hold two feet off the ground and drop it on carpet.."the butt of it"...if it fires"clicks"...you got a bad one....I still don't believe it though...I have one and it's fine. ....keeping it...don't want their money...probably user error anyway
Like · Reply · 1 · October 23 at 11:34pm

Jason Thomas No thanks I love my remington 700 trigger and am not a sue happy pussy!
Like · Reply · 11 · September 28 at 8:49pm

3 Replies

John Richards Remember THIS!! THE ASSWIPE currently at the helm and in the process of destroying CABELAS,is also the same ASSWIPE that almost destroyed REMINGTON ARMS,another REAL AMERICAN CORPORATION.
Like · Reply · 1 · October 22 at 6:56pm

1 Reply

Chat (12)

EXHIBIT 28

; sparkle
be as *pétillant*,
which later made its
: Caribbean) takes
headiness usually
ider. Right now it's
pular cocktails as
d Dark 'n' Stormy.
r ale, this so-called
c and is typically
ale, it's not ginger
bonated water) is a
te awakener; with a
d perhaps a pour of
ituted for root beer
refreshing beverage
ı authentic ginger
in liquor stores
easy to make at
ness and spice can
ır taste.

a Tea

matcha, a pow-
se green tea that
tury Japan (by way
s deep, slightly
lso

charts
dants.
find it
ed in hot
ced tea, and
smoothies;
a matcha
oesn't stop
incorpo-
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)
man

ng twist
beer classic.

Mimi's Ginger Beer

- ¼ lb fresh ginger, peeled and cut into small pieces
- 1 quart boiling water
- ½ cup floral honey
- 5-8 whole cloves
- 1 (1-inch) cinnamon stick
- ½ cup freshly squeezed lime or lemon juice
- Grated zest of 1/2 lime or lemon
- Ice, citrus fruit juice and/or dark rum (optional), for serving

1. Put ginger in a food processor, adding just enough cold water to puree it. Scrape pureed ginger into a large, heatproof glass or ceramic bowl or pitcher and add boiling water, honey, cloves, cinnamon stick, zest and juice. Cover loosely with a kitchen towel and keep mixture in a warm place for about 4 hours, skimming off the foam as it accumulates on the surface.

2. Stir in 1 quart cold water and taste for sweetness, adding more honey or lemon or lime juice as needed. Strain ginger beer and pour it into ceramic or glass bottles. Cap tightly and store in the refrigerator. Serve ginger beer as soon as it is chilled, or wait 2-3 days for it to ferment and start to fizz slightly. Dilute with ice, more cold water, citrus juice—or, for an extra jolt, dark rum. Chill, covered, for up to 1 week. Makes about 2 quarts.

There's ginger beer in my float!

LEGAL NOTICE OF SETTLEMENT

If you own certain Remington firearms, you may be eligible for benefits from a class action settlement.

A proposed nationwide Settlement has been preliminarily approved in a class action lawsuit involving certain Remington firearms. The class action lawsuit claims that trigger mechanisms with a component part known as a trigger connector are defectively designed and can result in accidental discharges without the trigger being pulled. The lawsuit further claims that from May 1, 2006 to April 9, 2014, the X-Mark Pro® trigger mechanism assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 or Seven bolt-action rifles containing such trigger mechanisms to discharge without a trigger pull under certain limited conditions. The lawsuit contends that the value and utility of these firearms have been diminished as a result of these alleged defects. Defendants deny any wrongdoing.

Who's included?

The Settlement provides benefits to:

(1) Current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a Remington trigger mechanism that utilizes a trigger connector;

(2) Current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 who did not participate in the voluntary X-Mark Pro product recall prior to April 14, 2015; and

(3) Current and former owners of Remington Model 700 and Model Seven rifles who replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

What does the Settlement provide?

Settlement Class Members may be entitled to: (1) have their trigger mechanism retrofitted with a new X-Mark Pro or other connectorless trigger mechanism at no cost to the class members; (2) receive a voucher code for Remington products redeemable at Remington's online store; and/or (3) be refunded the money they spent to replace their Model 700 or Seven's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

How can I obtain benefits?

Submit a Claim Form. Claim Forms can be found at www.remingtonfirearmsclassactionsettlement.com or by calling 1-800-876-5940.

What are my legal rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by **October 5, 2015**. If you stay in the Settlement Class, you may object to the Settlement by **October 5, 2015**.

The Court will hold a hearing on **December 14, 2015**, to consider whether to approve the Settlement and a request for attorneys' fees of up to $12.5 million, plus a payment of $2,500 for each named Plaintiff. You or your own lawyer may appear at the hearing at your own expense.

For more information or a Claim Form:
1-800-876-5940 or
www.remingtonfirearmsclassactionsettlement.com

EXHIBIT 29

LEGAL NOTICE

If you were exposed to asbestos in Xinsulation, you could get benefits from a class action settlement.

A settlement of a class action lawsuit affects you if you were ever exposed to asbestos in Xinsulation, Xbestos, or other ABC Corporation products. The settlement will pay people who are suffering from an asbestos-related disease, as well as those who were exposed but not sick, who need medical monitoring. If you qualify, you may send in a claim form to ask for payment, or you can exclude yourself from the settlement, or object.

The United States District Court for the District of State authorized this notice. The Court will have a hearing to consider whether to approve the settlement, so that the benefits may be paid.

Who's Affected?

Homeowners whose homes have or had Xinsulation (pictured and described to the right) are included in the settlement. Construction workers who installed, or worked around, Xbestos and other ABC products are also included, as described in separate notices. *You're a 'Class Member' if you were exposed to asbestos fibers in any ABC Corporation products any time before Month 00, 0000.*

Did your home ever have Xinsulation?

Xinsulation is in the attics and walls of older homes. It's loose, white, and fluffy. Be careful not to disturb it. It may be under other types of insulation. If you're not sure whether your home has or had Xinsulation, you can call toll free or visit the website below.

What's this About?

The lawsuit claimed that ABC made and sold products knowing that the asbestos fibers contained in them posed a danger to the health and safety of anyone exposed to them. The suit claimed that exposure increased the risk of developing Asbestosis, Mesothelioma, Lung Cancer, or other diseases that scientists have associated with exposure to asbestos. ABC denies all allegations and has asserted many defenses. The settlement is not an admission of wrongdoing or an indication that any law was violated.

What can you Get from the Settlement?

There will be an Injury Compensation Fund of $200 million for Class Members who have been diagnosed with an asbestos-related disease, and a $70 million Medical Monitoring Fund for checking the health of those who were exposed but are not currently suffering from an asbestos-related disease. Compensation for injuries will be in varying amounts for specific diseases:

Disease	Minimum	Maximum	Average
Mesothelioma	$10,000	$100,000	$20,000-$30,000
Lung Cancer	$5,000	$43,000	$9,000-$15,000
Other Cancer	$2,500	$16,000	$4,000-$6,000
Non-Malignant	$1,250	$15,000	$3,000-$4,000

Medical monitoring payments will be $1,000 or the amount of your actual medical expenses, whichever is greater.

How do you Get a Payment?

A detailed notice and claim form package contains everything you need. Just call or visit the website below to get one. **Claim forms are due by Month 00, 0000**. For an injury compensation claim, you'll have to submit a statement from a doctor that describes your current medical condition and confirms that you have one of the diseases in the box above. For a medical monitoring claim, you'll have to show proof of your exposure to an ABC asbestos-containing product.

What are your Options?

If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by **Month 00, 0000,** or you won't be able to sue, or continue to sue, ABC about the legal claims in this case. If you exclude yourself, you can't get a payment from this settlement. If you stay in the Class, you may object to the settlement by **Month 00, 0000**. The detailed notice describes how to exclude yourself or object. The Court will hold a hearing in this case (*Smith v. ABC Corp.*, Case No. CV-00-1234) on **Month 00, 0000,** to consider whether to approve the settlement and attorneys' fees and expenses totalling no more than $30 million. You may appear at the hearing, but you don't have to. For more details, call toll free 1-800-000-0000, go to www.ABCsettlement.com, or write to ABC Settlement, P.O. Box 000, City, ST 00000.

1-800-000-0000 **www.ABCsettlement.com**

EXHIBIT 30

A class action lawsuit has been settled. If you own certain **Remington firearms** you may be affected.
Click here for more information
remingtonfirearmsclassactionsettlement.com

EXHIBIT 31

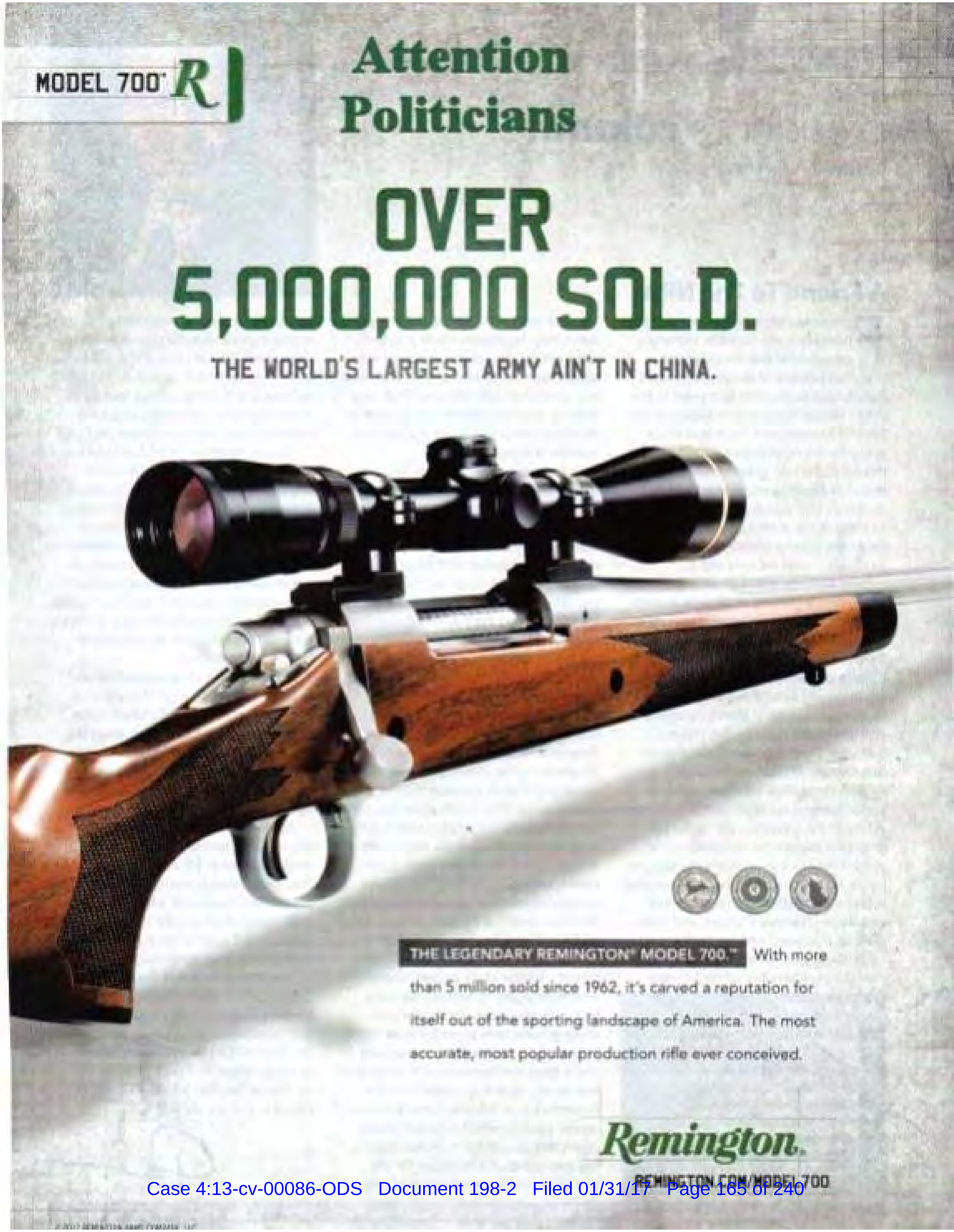
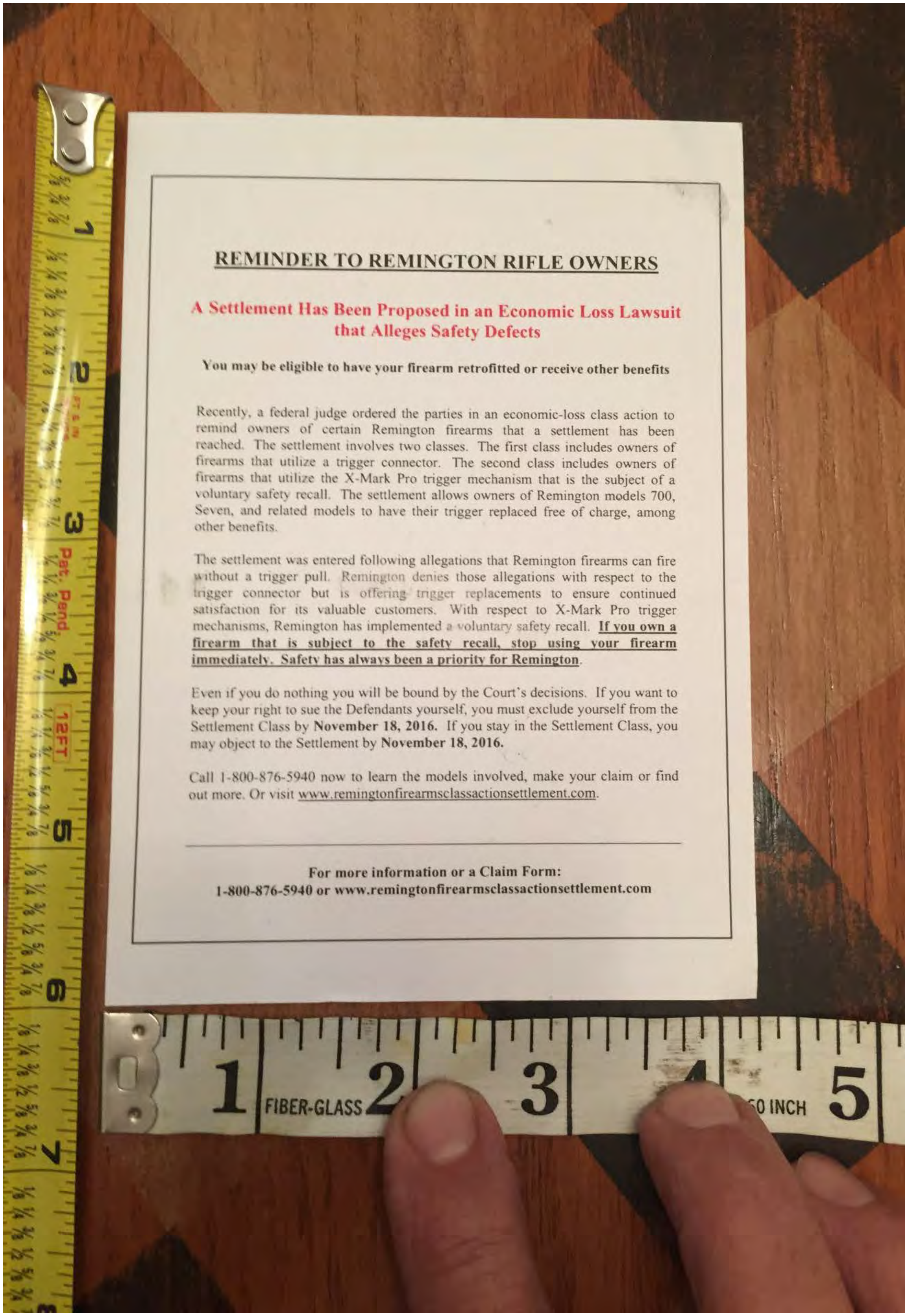

MODEL 700
Attention Politicians
OVER 5,000,000 SOLD.
THE WORLD'S LARGEST ARMY AIN'T IN CHINA.
THE LEGENDARY REMINGTON® MODEL 700.™ With more than 5 million sold since 1962, it's carved a reputation for itself out of the sporting landscape of America. The most accurate, most popular production rifle ever conceived.
Remington.
REMINGTON.COM/MODEL700

EXHIBIT 32



REMINDER TO REMINGTON RIFLE OWNERS

A Settlement Has Been Proposed in an Economic Loss Lawsuit that Alleges Safety Defects

You may be eligible to have your firearm retrofitted or receive other benefits

Recently, a federal judge ordered the parties in an economic-loss class action to remind owners of certain Remington firearms that a settlement has been reached. The settlement involves two classes. The first class includes owners of firearms that utilize a trigger connector. The second class includes owners of firearms that utilize the X-Mark Pro trigger mechanism that is the subject of a voluntary safety recall. The settlement allows owners of Remington models 700, Seven, and related models to have their trigger replaced free of charge, among other benefits.

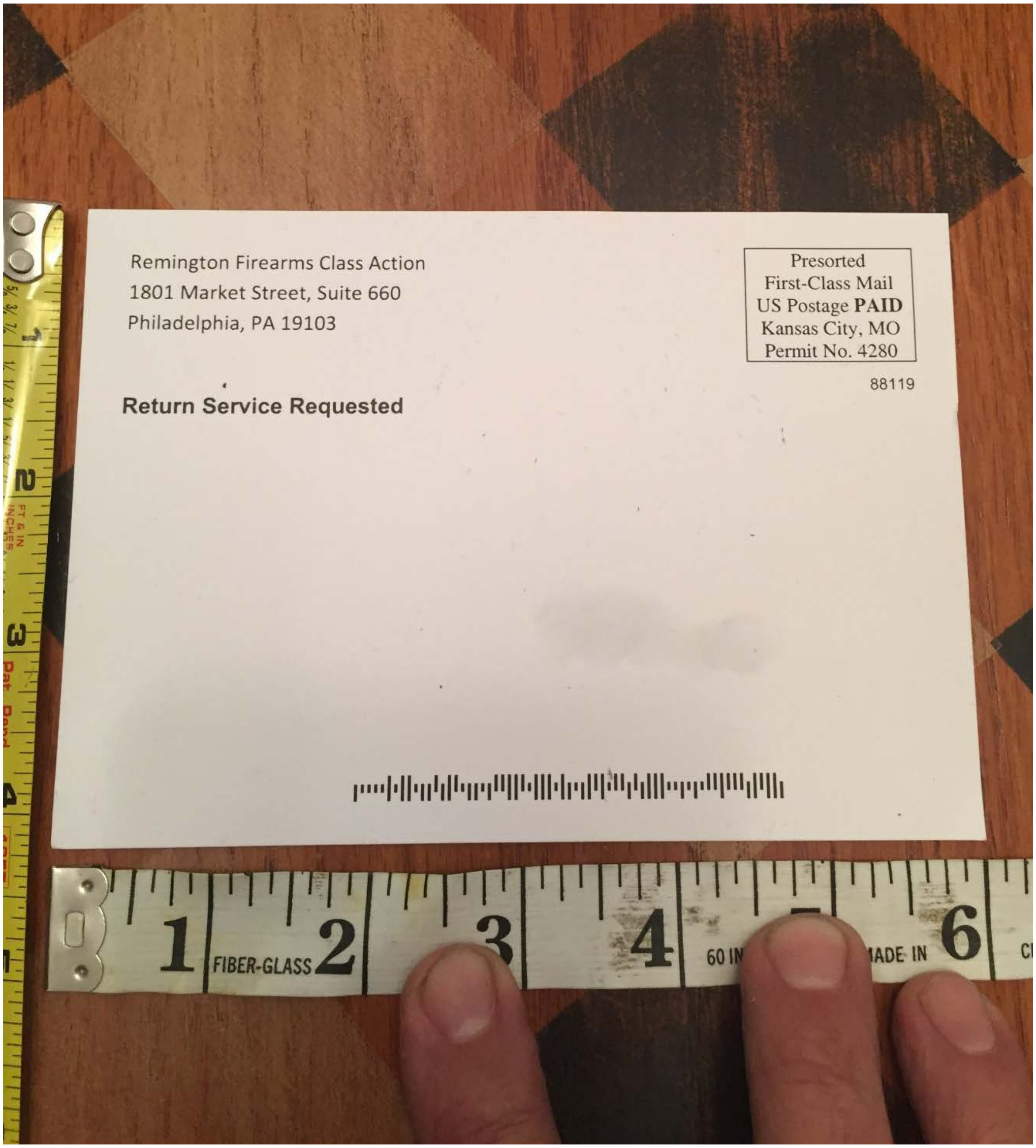
The settlement was entered following allegations that Remington firearms can fire without a trigger pull. Remington denies those allegations with respect to the trigger connector but is offering trigger replacements to ensure continued satisfaction for its valuable customers. With respect to X-Mark Pro trigger mechanisms, Remington has implemented a voluntary safety recall. **If you own a firearm that is subject to the safety recall, stop using your firearm immediately. Safety has always been a priority for Remington.**

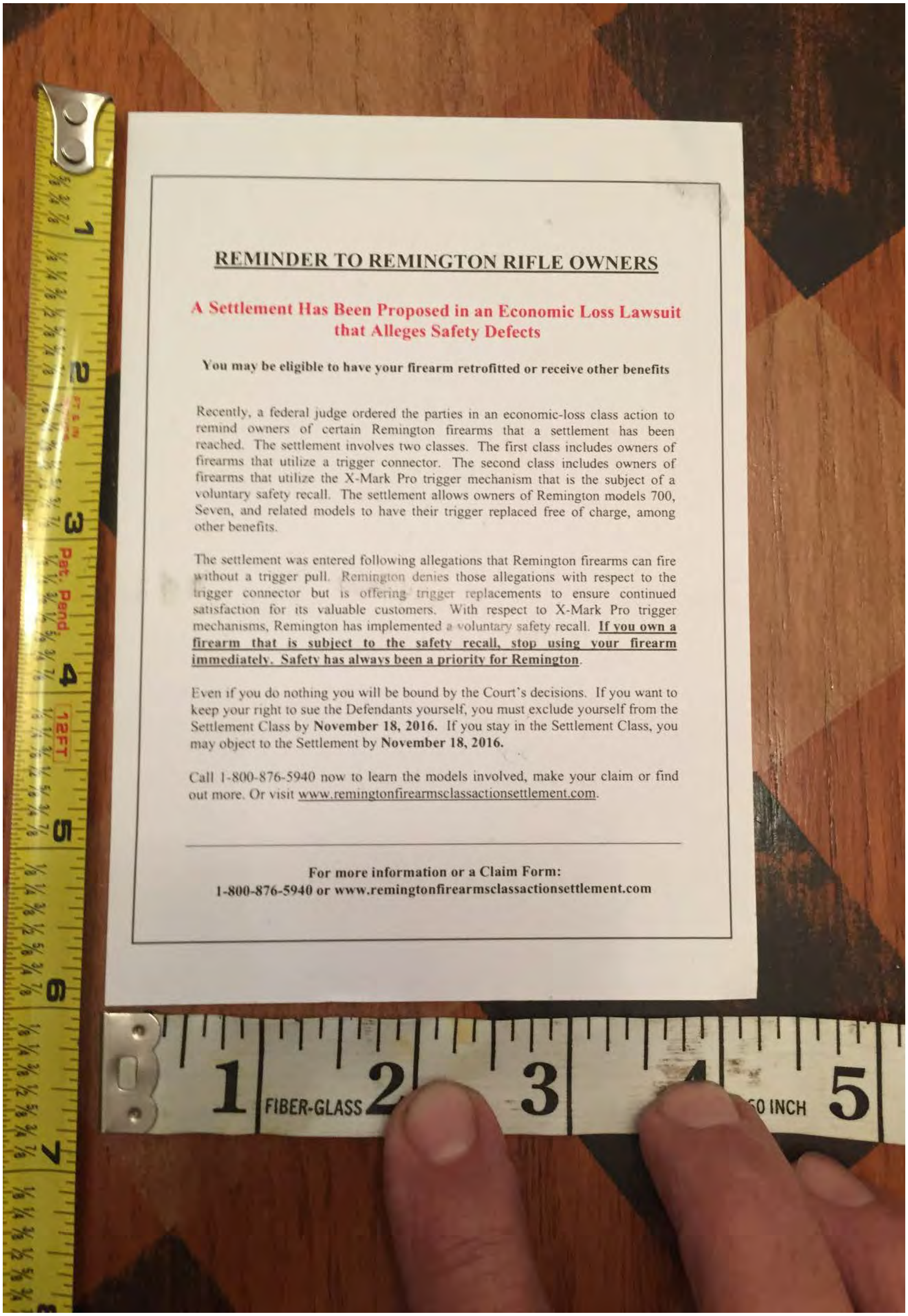
Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by **November 18, 2016.** If you stay in the Settlement Class, you may object to the Settlement by **November 18, 2016.**

Call 1-800-876-5940 now to learn the models involved, make your claim or find out more. Or visit www.remingtonfirearmsclassactionsettlement.com.

For more information or a Claim Form:
1-800-876-5940 or www.remingtonfirearmsclassactionsettlement.com

EXHIBIT 33


Remington Firearms Class Action
1801 Market Street, Suite 660
Philadelphia, PA 19103
Return Service Requested
Presorted
First-Class Mail
US Postage PAID
Kansas City, MO
Permit No. 4280
88119
FIBER-GLASS
60 IN
MADE IN



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Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by **November 18, 2016.** If you stay in the Settlement Class, you may object to the Settlement by **November 18, 2016.**

Call 1-800-876-5940 now to learn the models involved, make your claim or find out more. Or visit www.remingtonfirearmsclassactionsettlement.com.

For more information or a Claim Form:
1-800-876-5940 or www.remingtonfirearmsclassactionsettlement.com

EXHIBIT 34

4G 85% 7:41 AM

Fwd: REMINDER TO REMINGTON RIFLE...

Subject: REMINDER TO REMINGTON RIFLE OWNERS REGARDING SETTLEMENT OF LAWSUIT THAT ALLEGES SAFETY DEFECTS
Reply-To: Remington Arms Company <donotreply@remington.com>

View Online

REMINDER TO REMINGTON RIFLE OWNERS

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Recently, a federal judge ordered the parties in an economic-loss class action to remind owners of certain Remington firearms that a settlement has been reached. The settlement involves two classes. The first class includes owners of firearms that utilize a trigger connector. The second class includes owners of firearms that utilize the X-Mark Pro trigger mechanism that is the subject of a voluntary safety recall. The settlement allows owners of Remington models 700, Seven, and related models to have their trigger replaced free of charge, among other benefits.

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Call 1-800-876-5940 now to learn the models involved, make your claim or find out more. Or visit www.remingtonfirearmsclassactionsettlement.com.

Remington Outdoor Company | 870 Remington Drive | Madison, NC 27025 | United States
Unsubscribe

EXHIBIT 35

ATTENTION

OWNERS OF REMINGTON 12-GA MODEL 870, 1100, 11-87, 3200 AND SPORTSMAN 58, 12-A, 12-P SHOTGUNS

Owners of Remington 12-gauge Model 870, 1100, 11-87, 3200 and Sportsman 58 and Sportsman 12-A and 12-P shotguns manufactured between 1960 and June 1995 (the "Shotguns") who have not previously excluded themselves from the settlement are entitled to receive a payment ("Settlement Check"), as part of the resolution of the class action lawsuit in Garza v. Sporting Goods Properties, Inc., Civ. No. SA-93-CA-1082 (W.D.Tex.). The lawsuit was brought against Remington and DuPont, the former parent company of Remington, by several owners of Shotguns (the "Class Plaintiffs") on behalf of all such owners. The Class Plaintiffs claimed that the barrel steel formerly used in the Shotguns was not strong enough and the barrels sometimes burst in normal use, causing damage to the gun and, in some cases, serious bodily injury. Remington and DuPont denied—and continue to deny—such claims. They assert that (1) the steel used was appropriate for use in Shotguns; (2) barrel bursts are extremely rare and occur only when improper ammunition, including improperly loaded ammunition generating much greater than normal firing pressure, is used, or when the barrels are obstructed; and (3) the Remington owners' manual and the accompanying firearms safety booklet gives full and adequate warning of such hazards.

There has been no class action trial regarding these matters. The Class Plaintiffs have not proven any of their claims, and Remington and DuPont have not proven any of their defenses. Instead of engaging in long and costly litigation, the parties have agreed to a settlement, which the United States District Court for the Western District of Texas (in San Antonio) has approved as fair, reasonable and adequate.

Under the terms of that settlement, Remington has begun to make, and will continue to make, barrels for Model 870, 1100, and 11-87 12-gauge shotguns from a different type of steel, which can withstand higher pressures. Also as part of the Settlement, eligible shotgun owners are entitled to receive shares of a cash settlement fund, accompanied by a safety brochure. After payment of notice and administration costs, compensation for Class Plaintiffs, and class counsel's fees and expenses as awarded by the Court, the amount available for distribution as Settlement Checks to owners of the Shotguns is $17.125 million.

To obtain a share of this fund, YOU MUST:

PUT YOUR VERIFIED SIGNATURE, ADDRESS, SOCIAL SECURITY NUMBER, AND TELEPHONE NUMBER ON THE BOTTOM OF THIS FORM ALONG WITH THE SERIAL NUMBERS OF ANY 12-GAUGE REMINGTON MODEL 870, 1100, 11-87, 3200 AND SPORTSMAN 58, OR SPORTSMAN 12-A OR 12-P SHOTGUNS YOU OWN. THE FORM MUST BE POSTMARKED NO LATER THAN SEPTEMBER 30, 1996, AND SENT TO THE ADDRESS BELOW.

AS A CONDITION OF CASHING YOUR SETTLEMENT PAYMENT CHECK, YOU WILL BE REQUIRED TO READ, AND TO AGREE THAT YOU WILL FOLLOW THE INSTRUCTIONS CONTAINED IN, THE SAFETY BROCHURE WHICH WILL BE SENT WITH YOUR CHECK. The amount each participating class member is to receive will be based on the number, models and manufacturing dates of his or her Shotgun(s) and the total number of valid claims filed. It is anticipated that Settlement Checks will be sent to eligible owners by January 15, 1997.

EXCLUSIONS: The following are not eligible to receive, or serve as the basis of, Settlement Checks:

a) Employees of Remington and DuPont, except as to Shotguns owned by them for personal use;

b) Resellers and distributors of Remington and DuPont (except as to Shotguns owned by them for personal use, rather than for resale or business promotional purposes); and

c) Recently manufactured Remington 12-gauge shotguns with these or higher serial numbers: Model 870—B457166M; Model 1100—RO64388V; and Model 11—87—PC 495255.

IMPORTANT NOTE: If your form is not postmarked on or before September 30, 1996, you will not receive a share of the settlement funds, but **you will remain bound by the terms of the settlement**, which bars claims (except bodily injury claims) relating to Shotguns manufactured prior to June 1995.

VERIFIED CLAIM FOR SETTLEMENT PAYMENT

I am the owner of the Remington 12-gauge Model 870, 1100, 11-87, 3200, or Sportsman 58, Sportsman 12-A or 12-P shotgun(s) listed below, am not excluded (as described in this notice) from receiving a Settlement Check for any of those Shotguns, and did not file a notice of exclusion in Garza v. Sporting Goods Properties, Inc. I understand that as a condition of cashing my Settlement Check, I will be required to read and agree to follow the instructions in the shotgun safety brochure which will be sent with my check.

MODEL ________________ SERIAL # ________________

MODEL ________________ SERIAL # ________________

☐ Check here if a list of additional shotgun models and serial numbers is attached

NAME (PLEASE PRINT) ________________ SOCIAL SECURITY NO. OR EIN ___ ___ ___ – ___ ___ – ___ ___ ___ ___

ADDRESS ________________ CITY ________ STATE ________ ZIP ________

( ) –
TELEPHONE

I declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct. Dated on ________________, 1996.

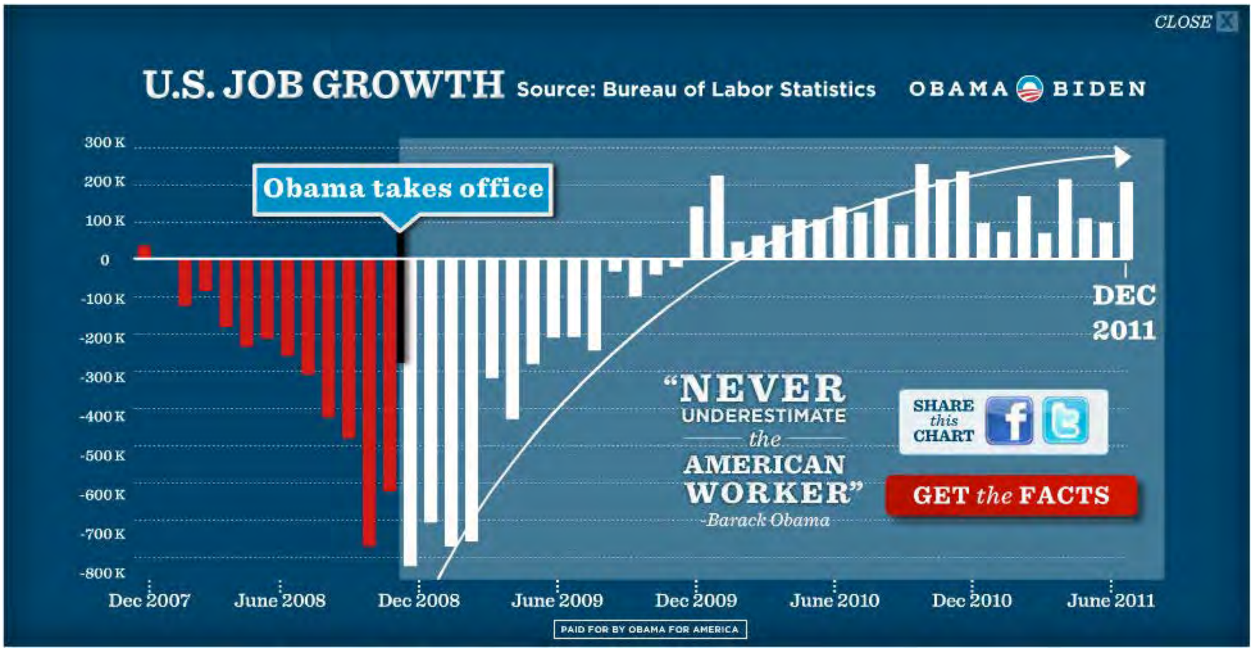
MAIL THIS FORM TO:
Shotgun Settlement
P.O. Box 1516
Faribault, MN 55021-1516

Your claim must be postmarked no later than September 30, 1996.
(This coupon may be photocopied for use by other claimants)

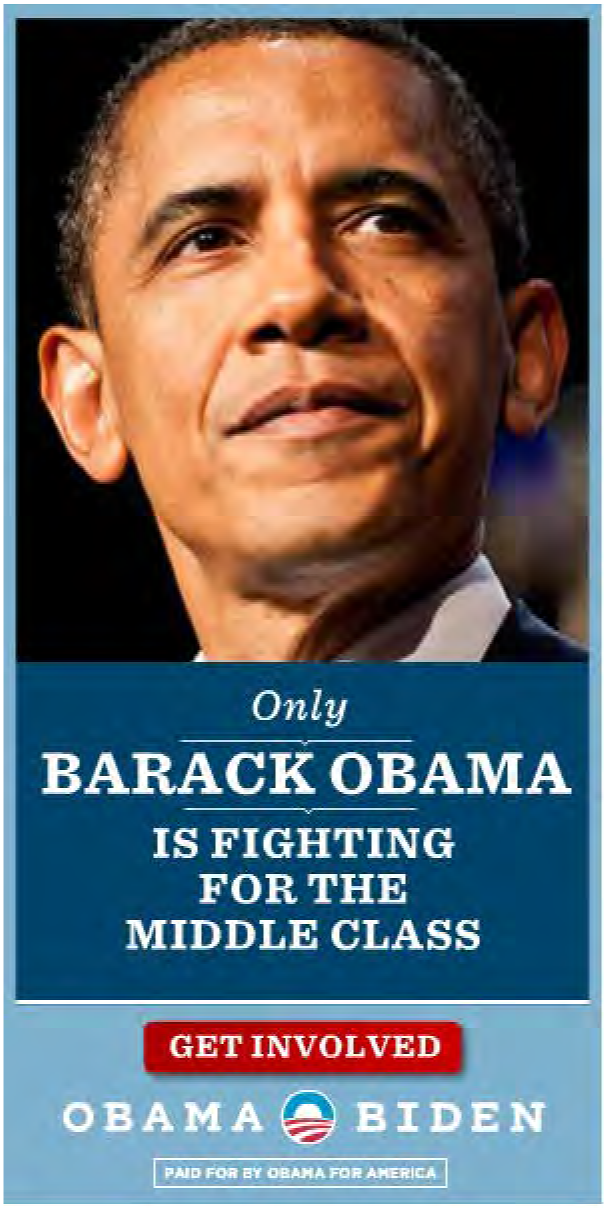
____
SIGNATURE

EXHIBIT 36

OBAMA BIDEN
CLOSE
COLORADO VOTES EARLY
EARLY VOTING has BEGUN
CONFIRM YOUR VOTING LOCATION
PAID FOR BY OBAMA FOR AMERICA


CLOSE
U.S. JOB GROWTH Source: Bureau of Labor Statistics
OBAMA BIDEN
300 K
200 K
100 K
0
-100 K
-200 K
-300 K
-400 K
-500 K
-600 K
-700 K
-800 K
Obama takes office
DEC 2011
"NEVER UNDERESTIMATE the AMERICAN WORKER"
-Barack Obama
SHARE this CHART
GET the FACTS
Dec 2007
June 2008
Dec 2008
June 2009
Dec 2009
June 2010
Dec 2010
June 2011
PAID FOR BY OBAMA FOR AMERICA

OBAMA BIDEN
CLOSE
WISCONSIN VOTES EARLY
EARLY VOTING has BEGUN
CONFIRM YOUR VOTING LOCATION
PAID FOR BY OBAMA FOR AMERICA


Only
BARACK OBAMA
IS FIGHTING
FOR THE
MIDDLE CLASS
GET INVOLVED
OBAMA BIDEN
PAID FOR BY OBAMA FOR AMERICA

Join the
MOVEMENT TODAY!
GET INVOLVED
PAID FOR BY OBAMA FOR AMERICA

Because of Barack Obama
DON'T ASK DON'T TELL IS HISTORY
32 MILLION NEW PEOPLE WILL HAVE HEALTH CARE
THE COMBAT MISSION IN IRAQ ENDED
2012
BARACKOBAMA.COM
JOIN THE CAMPAIGN
PAID FOR BY OBAMA FOR AMERICA

Because of
Barack Obama
The combat mission in Iraq ended
Don't Ask Don't Tell is history
First Latina on the Supreme Court
32 million new people will have health care
2012
BARACKOBAMA.COM
JOIN THE CAMPAIGN
PAID FOR BY OBAMA FOR AMERICA

EXHIBIT 37

TODD B. HILSEE C.V

Summary

Todd Bruce Hilsee was the first person judicially recognized as an expert on class action notice in published decisions in the United States and in Canada, *See In re Domestic Air Transp. Litig.*, 141 F.R.D. 534, (N.D. Ga., 1992) and *Wilson v. Servier Canada, Inc.*, 49 C.P.C. (4th) 233, [2000] O.J. No. 3392), among many other judicial citations. Mr. Hilsee's ground-breaking work to establish today's notice standards included Holocaust victims' claims programs as well as international securities, asbestos, human rights, and hurricane victims' matters. Hilsee has been cited favorably more than any other notice expert, and has testified in court more often and more successfully than any other person in the field. Hilsee brought to courts the use of media audience data to quantify the "net reach" of class members, and brought "noticeable" notice designs as well.

Mr. Hilsee was the only notice expert invited to testify before the Advisory Committee on Civil Rules of the Judicial Conference of the United States regarding the 2003 plain language amendment to Federal Rule of Civil Procedure 23. He subsequently collaborated to write and design the illustrative "model" plain language notices for the Federal Judicial Center (FJC), including detailed notices, summary notices and envelopes, now at www.fjc.gov. He collaborated to create the FJC's "Notice and Claims Process Checklist and Guide" and contributed with attribution to the FJC's "Managing Class Action Litigation: A Pocket Guide for Judges."

Mr. Hilsee has authored and co-authored numerous articles on notice and due process, including law review and journal articles such as "*Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*," 18 Georgetown Journal of Legal Ethics 1359 (Fall 2005); and "*Hurricanes, Mobility and Due Process. The 'Desire to Inform' Requirement for Effective Class Notice is Highlighted by Katrina*," 80 Tulane Law Review 1771 (June 2006). Hilsee has lectured and/or been featured in educational DVD's and materials used during many judicial and bar association panels and symposiums, and at law schools including Harvard, Columbia, Temple, Cleveland-Marshall, and Tulane. He has lectured at the FJC's "District Judge Workshops," and served as an editor for the ABA's International Litigation committee.

As a communications professional, he served with Foote, Cone & Belding, the largest U.S. domestic advertising firm, where he was awarded the American Marketing Association's award for effectiveness. He received his B.S. in Marketing from the Pennsylvania State University. Todd can be reached at thilsee@hilseegroup.com.

Judicial Recognition

Judge Lee Rosenthal, *Advisory Committee on Civil Rules of the Judicial Conference of the United States* (Jan. 22, 2002), addressing Mr. Hilsee in a public hearing on proposed changes to Federal Rule of Civil Procedure 23:

> *I want to tell you how much we collectively appreciate your working with the Federal Judicial Center to improve the quality of the model notices that they're developing. That's a tremendous contribution and we appreciate that very much…You raised three points that are criteria for good noticing, and I was interested in your thoughts on how the rule itself that we've proposed could better support the creation of those or the insistence on those kinds of notices . . .*

Judge Barbara J. Rothstein, *Director, Federal Judicial Center,* (2010) Managing Class Action Litigation: A Pocket Guide for Judges. (Preface):

> *This pocket guide is designed to help federal judges manage the increased number of class action cases filed in or removed to federal courts as a result of the Class Action Fairness Act of 2005. . . This third edition includes an expanded treatment of the notice and claims processes. . . Todd Hilsee, a class action notices expert with The Hilsee Group, supplied pro bono assistance in improving the sections on notices and on claims processes.*

Judge Marvin Shoob, *In re Domestic Air Transp. Antitrust Litig.,* 141 F.R.D. 534, 548 (N.D. Ga. 1992):

> *The Court finds Mr. Hilsee's testimony to be credible. Mr. Hilsee's experience is in the advertising industry. It is his job to determine the best way to reach the most people. Mr. Hilsee answered all questions in a forthright and clear manner. Mr. Hilsee performed additional research prior to the evidentiary hearing in response to certain questions that were put to him by defendants at his deposition . . . The Court believes that Mr. Hilsee further enhanced his credibility when he deferred responding to the defendant's deposition questions at a time when he did not have the responsive data available and instead utilized the research facilities normally used in his industry to provide the requested information.*

Mr. Justice Peter Cumming, *Wilson v. Servier Canada, Inc.,*, 49 C.P.C. (4th) 233, [2000] O.J. No. 3392:

> *[A] class-notification expert, Mr. Todd Hilsee, to provide advice and to design an appropriate class action notice plan for this proceeding. Mr. Hilsee's credentials and expertise are impressive. The defendants accepted him as an expert witness. Mr. Hilsee provided evidence through an extensive report by way of affidavit, upon which he had been cross-examined. His report meets the criteria for admissibility as expert evidence. R. v. Lavallee, [1990] 1 S.C.R. 852.*

Judge Elaine E. Bucklo, *Carnegie v. Household International*, (Aug. 28, 2006) No. 98 C 2178 (N.D. Ill.):

> *Class members received notice of the proposed settlement pursuant to an extensive notice program designed and implemented by Todd B. Hilsee… Mr. Hilsee has worked with the Federal Judicial Center to improve the quality of class notice. His work has been praised by numerous federal and state judges.*

Judge Eldon E. Fallon, *Turner v. Murphy, USA, Inc.,* 2007 WL 283431, at *6 (E.D. La.):

> *Mr. Hilsee is a highly regarded expert in class action notice who has extensive experience designing and executing notice programs that have been approved by courts across the country. Furthermore, he has handled notice plans in class action cases affected by Hurricanes Katrina, Rita, and Wilma, see In re High Sulfur Content Gasoline Products Liability Litigation, MDL 1632, p. 15-16 (E.D. La. Sept. 6, 2006) (Findings of Fact and Conclusions of Law in Support of Final Approval of Class Settlement), and has recently published an article on this very subject, see Todd B. Hilsee, Gina M. Intrepido, & Shannon R. Wheatman, Hurricanes, Mobility, and Due Process: The "Desire to Inform" Requirement for Effective Class Notice is Highlighted by Katrina, 80 Tul. L.Rev. 1771 (2006) (detailing obstacles and solutions to providing effective notice after Hurricane Katrina).*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Cir. Ct. Ark.):

> *Having admitted and reviewed the Affidavit of Todd Hilsee, and received testimony from Mr. Hilsee at the Settlement Approval Hearing concerning the success of the notice campaign, including the fact that written notice reached 91.8% of the potential Class*

Members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class Members who had an earlier opportunity to request exclusion but failed to do so. The Court also concludes that the extremely small number of objections to the Stipulation and Proposed Settlement embodied therein supports the Court's decision to not offer a second exclusion window.

Judge William A. Mayhew, ***Nature Guard Cement Roofing Shingles Cases***., (June 29, 2006) J.C.C.P. No. 4215 (Cal. Super. Ct.):

The method for dissemination of notice proposed by class counsel and described by the Declaration of Todd Hilsee … constitute the fairest and best notice practicable under the circumstances of this case, comply with the

Judge Sarah S. Vance, *In re Educ. Testing Serv. PLT 7-12 Test Scoring Litig.,* 447 F.Supp.2d 612, 617 (E.D. La. 2006):

At the fairness hearing, the Court received testimony from the Notice Administrator, Todd Hilsee, who described the forms and procedure used to notify class members of the proposed settlement and their rights with respect to it . . . The Court is satisfied that notice to the class fully complied with the requirements of Rule 23.

Judge Douglas L. Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (Feb. 22, 2005) No. CJ-03-714 (D. Okla.):

I want the record also to demonstrate that with regard to notice, although my experience – this Court's experience in class actions is much less than the experience of not only counsel for the plaintiffs, counsel for the defendant, but also the expert witness, Mr. Hilsee, I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.

Judge John Speroni, *Avery v. State Farm,* (Feb. 25, 1998) No. 97-L-114 (Ill. Cir. Ct. Williamson Co.):

> *[T]his Court having carefully considered all of the submissions, and reviewed their basis, finds Mr. Hilsee's testimony to be credible. Mr. Hilsee carefully and conservatively testified to the reach of the Plaintiffs' proposed Notice Plan, supporting the reach numbers with verifiable data on publication readership, demographics and the effect that overlap of published notice would have on the reach figure . . . This Court's opinion as to Mr. Hilsee's credibility, and the scientific basis of his opinions is bolstered by the findings of other judges that Mr. Hilsee's testimony is credible.*

Judge John D. Allen, *Desportes v. American General Assurance Co.,* (April 24, 2007) No. SU-04-CV-3637 (Ga. Super. Ct.):

> [T]he Parties submitted the Affidavit of Todd Hilsee, the Court-appointed Notice Administrator and one of the preeminent class action notice experts in North America. After completing the necessary rigorous analysis, including careful consideration of Mr. Hilsee's Affidavit, the Court finds that [the notice] . . .fully satisfied the requirements of the Georgia Rules of Civil Procedure (including Ga. Code Ann. § 9-11-23(c)(2) and (e)), the Georgia and United States Constitutions (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Michael Maloan, *Cox v. Shell Oil,* 1995 WL 775363, at *6, (Tenn. Ch. Ct.):

> *Cox Class Counsel and the notice providers worked with Todd B. Hilsee, an experienced class action notice consultant, to design a class notice program of unprecedented reach, scope, and effectiveness. Mr. Hilsee was accepted by the Court as a qualified class notice expert . . . He testified at the Fairness Hearing, and his affidavit was also considered by the Court, as to the operation and outcome of this program.*

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (Oct. 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct. Middlesex Co.):

> *The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process. The parties have retained Todd Hilsee... who has extensive experience designing similar notice programs...The form of the notice is reasonably calculated*

> *to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.*

Currie v. McDonald's Rests. of Canada Ltd., 2005 CanLll 3360 (ON C.A.):

> *The respondents rely upon the evidence of Todd Hilsee, an individual with experience in developing notice programs for class actions. In Hilsee's opinion, the notice to Canadian members of the plaintiff class in Boland was inadequate . . . I am satisfied that it would be substantially unjust to find that the Canadian members of the putative class in Boland had received adequate notice of the proceedings and of their right to opt out . . . I am not persuaded that we should interfere with the motion judge's findings . . . The right to opt out must be made clear and plain to the non-resident class members and I see no basis upon which to disagree with the motion judge's assessment of the notice. Nor would I interfere with the motion judge's finding that the mode of the notice was inadequate.*

Judge Jerome E. Lebarre, *Harp v. Qwest Commc'ns* (June 21, 2002) No. 0110-10986 (Ore. Cir. Ct. Multnomah Co.):

> *So, this agreement is not calculated to communicate to plaintiffs any offer. And in this regard I accept the expert testimony conclusions of Mr. Todd Hilsee. Plaintiffs submitted an expert affidavit of Mr. Hilsee dated May 23 of this year, and Mr. Hilsee opines that the User Guide was deceptive and that there were many alternatives available to clearly communicate these matters….*

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (Nov. 22, 2002) No. 13007 (Tenn. Ch.):

> *Based on the evidence submitted and based on the opinions of Todd Hilsee, a well-recognized expert on the distribution of class notices . . . MGA and class counsel have taken substantial and extraordinary efforts to ensure that as many class members as practicable received notice about the settlement. As demonstrated by the affidavit of Todd Hilsee, the effectiveness of the notice campaign and the very high level of penetration to the settlement class were truly remarkable . . . The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.*

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Cir. Ct. Ark.):

> *Additionally, the Court was provided with expert testimony from Todd Hilsee at the Settlement Approval Hearing concerning the adequacy of the notice program. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances . . . and the requirements of due process under the Arkansas and United States Constitutions.*

Judge Fred Biery, *McManus v. Fleetwood Enter., Inc.*, (Sept. 30, 2003) No. SA-99-CA-464-F (W.D. Tex.):

> *Based upon the uncontroverted showing Class Counsel have submitted to the Court, the Court finds that the settling parties undertook a thorough notice campaign designed by Todd Hilsee . . . a nationally-recognized expert in this specialized field . . . The Court finds and concludes that the Notice Program as designed and implemented provided the best practicable notice to the members of the Class, and satisfied the requirements of due process.*

Judge Richard G. Stearns, *In re Lupron Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005):

> *With respect to the effectiveness of notice, in the absence of any evidence to the contrary, I accept the testimony of Todd Hilsee that the plan he designed achieved its objective of exposing 80 percent of the members of the consumer class. . .*

Mr. Justice Maurice Cullity, *Parsons/Currie v. McDonald's Rests. of Can.*, (Jan. 13, 2004) 2004 Carswell Ont. 76, 45 C.P.C. (5th) 304, [2004] O.J. No.83:

> *I found Mr. Hilsee's criticisms of the notice plan in Boland to be far more convincing than Mr. Pines' attempts during cross-examination and in his affidavit to justify his failure to conduct a reach and frequency analysis of McDonald's Canadian customers. I find it impossible to avoid a conclusion that, to the extent that the notice plan he provided related to Canadian customers, it had not received more than a perfunctory attention from him. The fact that the information provided to the court was inaccurate and misleading and that no attempt was made to advise the court after*

the circulation error had been discovered might possibly be disregarded if the dissemination of the notice fell within an acceptable range of reasonableness. On the basis of Mr. Hilsee's evidence, as well as the standards applied in class proceedings in this court, I am not able to accept that it did.

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litig.*, (June 16, 2006) MDL-1539 (D. Md.):

In that regard, I would also comment on the notice. The form and scope of the notice in this case, and I'm repeating a little bit what already appeared to me to be evident at the preliminary stage, but the form and scope of the notice has been again remarkable . . . The use of sort of plain language, the targeting of publications and media, the website with the translation into multiple languages, the mailings that have been done, I think you all are to be congratulated, and Mr. Hilsee and Claims Administrator as well.

Judge Paul H. Alvarado, *Microsoft I-V Cases,* (July 6, 2004) J.C.C.P. No. 4106 (Cal. Super. Ct.):

[T]he Court finds the notice program of the proposed Settlement was extensive and appropriate. It complied with all requirements of California law and due process. Designed by an expert in the field of class notice, Todd B. Hilsee, the notice plan alone was expected to reach at least 80% of the estimated 14.7 million class members. (Hilsee Decl. Ex. 3, ¶28). The Settlement notice plan was ultimately more successful than anticipated and it now appears that over 80% of the class was notified of the Settlement.

Judge Denise L. Cote, ***In re SCOR Holding (Switzerland) AG Litig.*,** (October 24, 2007) No. 04-CV-7897 (S.D. NY):

I should say I have not had a case before, that I remember, at least, in which an issue of the extent to which notice would effectively be made outside this country, and that seems to be the principal point of the affidavit of Mr. Hilsee, which is the first exhibit to the October 12 submission, and I've reviewed it. It seems as if it proposes something reasonable in terms of a plan of action to obtain notice that would be consistent with the constitutional requirements of due process so a judgment could be effectively entered in this litigation, including a bar order.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (Sept. 13, 2002) No. L-008830.00 (N.J. Super. Ct. Middlesex Co.):

> *Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were place . . .throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups . . . Mr. Hilsee designed the notification plan for the proposed settlement in accordance with this court's Nov. 1, 2001 Order. Mr. Hilsee is . . . well versed in implementing and analyzing the effectiveness of settlement notice plans.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litig.,* (March 1, 2007) MDL No. 1653-LAK (S.D. N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order and in the Affidavit of Todd B. Hilsee meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Richard J. Shroeder, *St. John v. Am. Home Prods. Corp.,* (Aug. 2, 1999) No. 97-2-06368-4 (Wash. Super. Ct. Spokane Co.):

> *[T]he Court considered the oral argument of counsel together with the documents filed herein, including the Affidavit of Todd B. Hilsee on Notice Plan…The Court finds that plaintiffs' proposed Notice Plan is appropriate and is the best notice practicable under the circumstances by which to apprise absent class members of the pendency of the above-captioned Class Action and their rights respecting that action.*

Judge Carter Holly, *Richison v. Am. Cemwood Corp.,* (Nov. 18, 2003) No. 005532 (Cal. Super. Ct. San Joaquin Co.):

> *The parties undertook an extensive notice campaign designed by a nationally recognized class action notice expert. See generally, Affidavit of Todd B. Hilsee on Completion of Additional Settlement Notice Plan.*

Judge Kirk D. Johnson, ***Sweeten v. American Empire Insurance Co.,*** (August 20, 2007) Cir. Ct. Ark., No. CV-2007-154-3:

> *Let [Mr. Hilsee] be so admitted for the purposes of this hearing, having been previously admitted by the Court and the Court having found his qualifications exemplary in this field.*

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19 2007) Cir. Ct. 14th Jud. D. Ct. La., No. 2004-2417-D:

> *The Court will so accept [Mr. Hilsee as an expert] on issues of the content and dissemination of legal notices, including Class Action Notices and notice campaigns.*

Judge John R. Padova, *Rosenberg v. Academy Collection Service, Inc.* (Dec. 19, 2005) No. 04-CV-5585 (E.D. Pa.):

> *[U]pon consideration of the Memorandum of Law in Support of Plaintiff's Proposed Class Questionnaire and Certification of Todd Hilsee, it is hereby ORDERED that Plaintiff's form of class letter and questionnaire in the form appended hereto is APPROVED. F.R.Civ.P. 23(c).*

Judge Bernard Zimmerman, *Ting v. AT&T,* 182 F.Supp.2d 902, 912-913 (N.D. Cal. 2002) (Hilsee had testified on the importance of wording and notice design features):

> *The phrase 'Important Information' is increasingly associated with junk mail or solicitations . . . From the perspective of affecting a person's legal rights, the most effective communication is generally one that is direct and specific.*

Judge David De Alba, *Ford Explorer Cases*, (Aug. 19, 2005) J.C.C.P. Nos. 4226 & 4270 (Cal. Super. Ct., Sacramento Co.):

> *It is ordered that the Notice of Class Action is approved. It is further ordered that the method of notification proposed by Todd B. Hilsee is approved.*

Judge Louis J. Farina, *Soders v. General Motors Corp.* (Oct. 31, 2003) No. CI-00-04255 (Pa. C.P. Lancaster Co.):

> *In this instance, Plaintiff has solicited the opinion of a notice expert who has provided the Court with extensive information explaining and supporting the Plaintiff's notice plan…After balancing the factors laid out in Rule 1712(a), I find that Plaintiff's publication method is the method most reasonably calculated to inform the class members of the pending action.*

Judge Eldon E. Fallon, *Turner v. Murphy, USA, Inc.*, 2007 WL 283431, at *5 (E.D. La.):

> *Most of the putative class members were displaced following hurricane Katrina . . . With this challenge in mind, the parties prepared a notice plan designed to reach the class members wherever they might reside. The parties retained Todd Hilsee . . . to ensure that adequate notice was given to class members in light of the unique challenges presented in this case.*

Judge Ronald B. Leighton, *Grays Harbor Adventist Christian School v. Carrier Corporation*, (May 29, 2007) No. 05-05437 (W.D. Wash):

> *The Court has considered this motion, the Affidavit of Todd B. Hilsee on Class Certification Notice Plan and the exhibits attached thereto, and the files and records herein. Based on the foregoing, the Court finds Plaintiffs' Motion for Approval of Proposed Form of Notice and Notice Plan is appropriate and should be granted.*

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litig.*, 2007 WL 1490466, at *34 (S.D.N.Y.):

> *In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. (See Affidavit of Todd B. Hilsee on Ability to Provide Multi-National Notice to Class Members, Dec. 19, 2005 ("Hilsee Aff.") ¶ 7.) According to this . . . the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.*

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litig.*, 2006 WL 132080, at *4 (D. Md.):

> *The Court further APPROVES the proposed Notice Plan, as set forth in the Affidavit of Todd B. Hilsee On International Settlement Notice Plan, dated December 19, 2005 (Docket No. 684). The Court finds that the form of Notice, the form of Summary Notice, and the Notice Plan satisfy the requirements of Fed.R.Civ.P. 23, due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all members of the Class.*

Judge John D. Allen, *Carter v. North Central Life Ins. Co.*, (April 24, 2007) No. SU-2006-CV-3764-6 (Ga. Super. Ct.):

> [T]he Parties submitted the Affidavit of Todd Hilsee, the Court-appointed Notice Administrator and one of the pre-eminent class action notice experts in North America. After completing the necessary rigorous analysis, including careful consideration of Mr. Hilsee's Affidavit, the Court finds that . . . The Notices prepared in this matter were couched in plain, easily understood language and were written and designed to the highest communication standards. The Notice Plan effectively reached a substantial percentage of Class Members and delivered noticeable Notices designed to capture Class Members' attention;

Judge Louis J. Farina, *Soders v. General Motors Corp.*, (Oct. 31, 2003) No. CI-00-04255 (Pa. C.P. Lancaster Co.):

> *Plaintiff provided extensive information regarding the reach of their proposed plan. Their notice expert, Todd Hilsee, opined that their plan will reach 84.8% of the class members. Defendant provided the Court with no information regarding the potential reach of their proposed plan . . . There is no doubt that some class members will remain unaware of the litigation, however, on balance, the Plaintiff's plan is likely to reach as many class members as the Defendant's plan at less than half the cost. As such, I approve the Plaintiff's publication based plan.*

Judge Paul H. Alvarado, *Microsoft I-V Cases*, (July 6, 2004) J.C.C.P. No. 4106 (Cal. Super. Ct.):

> *The notification plans concerning the pendency of this class action were devised by a recognized class notice expert, Todd B. Hilsee. Mr. Hilsee devised two separate class certification notice plans*

that were estimated to have reached approximately 80% of California PC owners on each occasion.

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co.,* (Feb. 12, 2004) No. 3:02-CV-431 (E.D. Va.):

The expert, Todd B. Hilsee, is found to be reliable and credible.

Judge Sarah S. Vance, *In re Educ. Testing Serv. PLT 7-12 Test Scoring Litig.,* 447 F.Supp.2d 612, 627 (E.D. La. 2006):

At the fairness hearing, class counsel, the Special Master, notice expert Todd Hilsee, and the Court Appointed Disbursing Agent detailed the reasons for requiring claims forms . . . As Todd Hilsee pointed out in his testimony, because plaintiffs had the choice of either individualized damages or an expedited payment, to send the expedited payments with the notice has the potential of encouraging plaintiffs to forego individualized recovery for far less than value, merely by cashing the check. The obvious undesirability of this suggestion gives the unmistakable appearance that the objection was captious. The objection to the claims process for expedited payments is overruled.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005):

I have examined the materials that were used to publicize the settlement, and I agree with Hilsee's opinion that they complied in all respects with the "plain, easily understood language" requirement of Rule 23(c). In sum, I find that the notice given meets the requirements of due process.

Judge John R. Padova, Nichols v. SmithKline Beecham Corp., (Apr. 22, 2005) No. 00-CV-6222 (E.D. Pa.):

As required by this Court in its Preliminary Approval Order and as described in extensive detail in the Affidavit of Todd B. Hilsee on Design Implementation and Analysis of Settlement Notice Program…Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all entities entitled thereto.

Judge Sarah S. Vance, *In re Babcock & Wilcox Co.,* (Aug. 25, 2000) No. 00-0558 (E.D. La.):

> *Furthermore, the Committee has not rebutted the affidavit of Todd Hilsee. . . that the (debtor's notice) plan's reach and frequency methodology is consistent with other asbestos-related notice programs, mass tort bankruptcies, and other significant notice programs…After reviewing debtor's Notice Plan, and the objections raised to it, the Court finds that the plan is reasonably calculated to apprise unknown claimants of their rights and meets the due process requirements set forth in Mullane . . . Accordingly, the Notice Plan is approved.*

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Cir. Ct. Ark.):

> *[R]eceived testimony from Mr. Hilsee at the Settlement Approval Hearing concerning the success of the notice campaign, including the fact that written notice reached 97.7% of the potential Class members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class Members who had an earlier opportunity to request exclusion, but did not do so. The Court also concludes that the lack of valid objections also supports the Court's decision to not offer a second exclusion window . . . Although the Notice Campaign was highly successful and resulted in actual mailed notice being received by over 400,000 Class Members, only one Class Member attempted to file a purported objection to either the Stipulation or Class Counsels' Application for Fees. The Court finds it significant that out of over 400,000 Class Members who received mailed Notice, there was no opposition to the proposed Settlement or Class Counsels' Application for Fees, other than the single void objection. The lack of opposition by a well-noticed Class strongly supports the fairness, reasonableness and adequacy of the Stipulation and Class Counsels' Application for Fees.*

Judge James R. Williamson, Kline v. The Progressive Corp., (Nov. 14, 2002) No. 01-L-6 (Cir. Ct. Ill. Johnson Co.):

> *The Court has reviewed the Affidavit of Todd B. Hilsee, one of the Court-appointed notice administrators, and finds that it is based on sound analysis. Mr. Hilsee has substantial experience designing and evaluating the effectiveness of notice programs.*

Judge Ross P. LaDart, *Meckstroth v. Toyota Motor Sales USA, Inc.,* (February 7, 2007) No. 583-318 (24th Jud. D. Ct. La.):

> *[U]nless there's any objection, the Court is aware of Mr. Hilsee's reputation. I'm aware of the most recent Tulane Law Review and other publications by you and members of your staff. He's so accepted as an expert as tendered.*

Judge Joseph R. Goodwin, *In re Serzone Products Liability Litig.,* 231 F.R.D. 221, 236 (S.D. W. Va. 2005):

> *As Mr. Hilsee explained in his supplemental affidavit, the adequacy of notice is measured by whether notice reached Class Members and gave them an opportunity to participate, not by actual participation. (Hilsee Supp. Aff. ¶ 6(c)(v), June 8, 2005)...Not one of the objectors support challenges to the adequacy of notice with any kind of evidence; rather, these objections consist of mere arguments and speculation. I have, nevertheless, addressed the main arguments herein, and I have considered all arguments when evaluating the notice in this matter. Accordingly, after considering the full record of evidence and filings before the court, I FIND that notice in this matter comports with the requirements of Due Process under the Fifth Amendment and Federal Rules of Civil Procedure 23(c)(2) and 23(e).*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Cir. Ct. Ark):

> *Additionally, the court was provided with expert testimony from Todd Hilsee at the Settlement Approval Hearing concerning the adequacy of the notice program . . . Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class.*

Judge Alfred G. Chiantelli, *Williams v. Weyerhaeuser Co.,* (Dec. 22, 2000) No. 995787 (Cal. Super. Ct. San Francisco Co.):

> *The Class Notice complied with this Court's Order, was the best practicable notice, and comports with due process . . . Based upon the uncontroverted proof Class Counsel have submitted to the Court, the Court finds that the settling parties undertook an extensive notice campaign designed by Todd Hilsee . . . a nationally recognized expert in this specialized field.*

Judge Kirk D. Johnson, ***Sweeten v. American Empire Insurance Co.,*** (August 20, 2007) Cir. Ct. Ark., No. CV-2007-154-3:

> *[T]he Court . . . of course has recognized the testimony of Todd Hilsee . . . which was given here today in open court, and Mr. Hilsee being admitted as an expert in this particular field . . .*

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litig.,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

> *[T]his Court approved a carefully-worded Notice Plan. . . See Affidavit of Todd B. Hilsee on Motion by Billy Ray Kidwell, attached as Exhibit A; see also, Affidavit of Todd B. Hilsee, attached as Exhibit C to the Joint Motion for Final Approval of Class Settlement (Record Doc. No. 71); Testimony of Todd Hilsee at Preliminary Approval Hearing, Tr. pp 6-17, attached as Exhibit B; Testimony of Todd Hilsee at Final Fairness Hearing, Tr. pp. 10-22, attached as Exhibit C.*

Regional Senior Justice Winkler, *Baxter v. Canada (Attorney General),* (March 10, 2006) No. 00-CV-192059- CPA (Ont. Super. Ct.):

> *The plaintiffs have retained Todd Hilsee, an expert recognized by courts in Canada and the United States in respect of the design of class action notice programs, to design an effective national notice program . . . the English versions of the Notices provided to the court on this motion are themselves plainly worded and appear to be both informative and designed to be readily understood. It is contemplated that the form of notice will be published in English, French and Aboriginal languages, as appropriate for each media vehicle.*

Judge James T. Genovese, *West v. G&H Seed Co.,* (May 27, 2003) No. 99-C-4984-A (La. Jud. Dist. Ct. St. Landry Parish):

> *The court finds that, considering the testimony of Mr. Hilsee, the nature of this particular case, and the certifications that this court rendered in its original judgment which have been affirmed by the – for the most part, affirmed by the appellate courts, the court finds Mr. Hilsee to be quite knowledgeable in his field and certainly familiar with these types of cases…the notice has to be one that is practicable under the circumstances. The notice provided and prepared by Mr. Hilsee accomplishes that purpose . . .*

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (Jan. 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct. Jefferson Co.):

> *In order to maximize the efficiency of the notice . . .Todd Hilsee . . . prepared and oversaw the notification plan. The record reflects that Mr. Hilsee is very experienced in the area of notification in class action settlements…This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections . . . The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.*

Judge Richard G. Stearns, *In re Lupron Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 84 (D. Mass. 2005):

> *Todd B. Hilsee . . . has served as a notice expert in more than 175 class action cases, including In re Holocaust Victims Assets Litig., No. CV-96-4849 (E.D.N.Y.); In re Domestic Air Transp. Antitrust Litig., MDL 861 (N.D.Ga.); In re Dow Corning Corp., 95-20512-11 (Bankr.E.D.Mich.); In re Synthroid Mktg., MDL 1182 (N.D.Ill.); and In re Bridgestone/Firestone Tires Prods. Liab. Litig., MDL No. 1373 (S.D.Ind.). Hilsee was the only notice expert invited to testify before the Advisory Committee on Civil Rules on the amendment to Rule 23 requiring "clear, concise, plain language notices." Hilsee was also asked by the Federal Judicial Center to design model notices to illustrate Rule 23 plain language "best practices."…*

Judge Susan Illston (N.D. Cal.), on Todd Hilsee's presentation at the ABA's 7th Annual National institute on Class Actions, Oct. 24, 2003, San Francisco, Cal.:

> *The notice program that was proposed here today, I mean, it's breathtaking. That someone should have thought that clearly about how an effective notice would get out. I've never seen anything like that proposed in practice . . . I thought the program was excellent. The techniques available for giving a notification is something that everyone should know about.*

Madam Justice Joan L. Lax, *Donnelly v. United Technologies,* (October 27, 2008) No. 06-CV-320045CP (Ont. Super. Ct.):

> *. . .Todd Hilsee, an expert recognized by courts in Canada and the United State in respect of the design of class action notice programs, described the Canadian Notice Plan. . .I am satisfied*

that Mr. Hilsee's plan is comprehensive, that it will have a high 'reach'. . .

Madam Justice Joan L. Lax, *Wong v. TJX,* (February 4, 2008) No. 07-CT-000272CP (Ont. Super. Ct.):

Mr. Hilsee has been recognized as a notice expert in Canadian class proceedings as well as in the United States. The proposed notice plan not only comports with Canadian standards, but it has virtually the same coverage as in the United States.

Oregon Court of Appeals, *Froeber v. Liberty Mutual,* (September 10, 2008) No. A132263 (Judge Rex Armstrong):

As to the notice issue, defendants introduced the testimony of Hilsee, an expert on notice who helped the parties in this case draft, create, and disseminate the notice. Hilsee testified, among other things, that the format of the notice followed standards set in national model notices, that the content of the notice adequately informed readers of the claims that the settlement released, and that including specific information about the putative Delaware action would have fostered confusion rather than clarity. After counsel for defendants and for objectors presented arguments, the trial court rejected objectors' notice argument by finding that "the notice is adequate. I feel the testimony by Mr. Hilsee is persuasive. . ." [T]hose conclusions had support in Hilsee's expert testimony, which--although such expert testimony is not strictly required to support a determination that notice is adequate--lent persuasive support that objectors did not counter or controvert with evidence of their own.

Judge Colleen Mary O'Toole, *West v. Carfax,* (December 24, 2009) 2009-Ohio-6857, (Ohio Court of Appeals); 2009 WL 5064143 (Ohio App. 11 Dist.):

[Appellants] question the effectiveness of email notice to post-2003 customers, observing that many people simply delete unsolicited emails as spam. Further, through the affidavit testimony of their expert, Todd B. Hilsee, they question whether mail notice was not possible to the balance of Carfax customers. Mr. Hilsee is a nationally-recognized expert in designing notices for class actions. . . Mr. Hilsee testified that similar procedures are routine in automotive litigation. Mr. Hilsee also questioned the efficacy of the publication notice given in Investor's Business Daily and USA Today, testifying that these papers were unlikely to be read by the population demographic which dominates the used car market.

> *We agree with appellants that, pursuant to Eisen, the notice provided in this case was defective.*

Mr. Justice J.R. Henderson, *Smith v. Inco,* (November 13, 2009) No. 12023/01 (Ontario Super. Ct.):

> *I also find that Hilsee is qualified to provide an opinion on these Issues. Hilsee has been accepted as an expert witness in many courts in the United States of America as to the design and implementation of notice programs created to notify class members of their rights with respect to class actions. He has also provided prospective and retrospective analyses of such notice programs, both in Canada and the USA. . .Given his education, work experience, and prior court involvement, I accept that Hilsee has an expertise in the fields of comprehension, dissemination, and readability of public documents.*

Judge David S. Gorbaty, *Orrill v. AIG,* *Orrill v. AIG, Inc.*, 38 So. 3d 457, 462-466 (La.App. 4 Cir. 2010):

> *It is our opinion that the persons who were suddenly subsumed into Orrill settlement class did not receive adequate notice and were not adequately represented. . . The appellants also presented the testimony of Todd Hilsee, who the court accepted as an expert in communications and notice. . . Appellants' expert, Todd Hilsee, opined that the notice in this case was woefully inadequate in terms of what a qualified professional would use to actually inform the class of its rights and options.*

Judge F. Pat VerSteeg, *Weber v. Mobil Oil,* (March 21, 2011) Case No. CJ-2001-53 (District Court of Custer County, State of Oklahoma):

> *Based upon testimony of the class notice expert, Todd Hilsee, approximately 40% of the putative class resides outside of the State of Oklahoma. No provision of the notice distribution plan suggests a methodology to reach those absent class members residing outside the State of Oklahoma, or for that matter, outside Dewey and Custer Counties. To be adequate, the notice plan and design must include a methodology whereby the Court can objectively determine the effectiveness of the class members reached. This is measured by a percentage of at least 70% or more. Without a calculation methodology the court has no objective basis from which a notice plan can be evaluated.*

Judge M. Joseph Tiemann, *Billieson v. Housing Authority of New Orleans,* (May 27, 2011) Case No. 94-19231 (Civil District Court for The Parish Of Orleans, State Of Louisiana):

> *[T]he Court also gave consideration to the following…The fact that Mr. Hilsee is a highly-regarded Notice Expert, and has provided thoughtful, scientific, carefully researched and detailed reports, analyses, and ultimately, his Affidavit. His recommendations are grounded in relevant experience regarding communicating complex legal information to class members in class action litigation. He was a lead author of the Federal Judicial Center's (the "FJC") Model Plain Language Notices, as well as the FJC publication entitled 2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, and he contributed content on the subject of notice to the FJC's 2010 3rd edition of Managing Class Actions: A Pocket Guide for Judges (all of which may be found at www.fjc.gov.)*

Judge Joan B. Gottschall, *Kaufman v. American Express,* (August 2, 2012) Case No. 07-01707 (United States District Court for the Northern District of Illinois):

> *After considering several proposed notice experts for the purpose of undertaking a second round of notice in this case, the court gave the Settling Parties an opportunity to respond to the proposed appointment of Todd B. Hilsee. The court has reviewed the Settling Parties' objections to Mr. Hilsee's appointment as well as the resumes of all proposed experts. The court does not view the objections to Mr. Hilsee's appointment as substantial. Mr. Hilsee appears to be the most qualified and experienced expert of those proposed, and the court concludes that he is an appropriate expert for this type of case*

Judge Joan B. Gottschall, *Kaufman v. American Express,* (August 9, 2013) Case No. 07-01707 (United States District Court for the Northern District of Illinois):

> *With regard to the limited opposition filed by the intervenors, the court agrees with the position taken by Mr. Hilsee, the court-appointed notice expert, that references to the intervenors' objections in the Supplemental Notice would not be neutral and would potentially prejudice class members, who can decide for themselves whether to object to or opt out of the settlement.*

Academic and Practitioner Comments

Arthur R. Miller, Professor of Law, Harvard Law School:

> *I read your piece on Mullane with great interest and am delighted to learn the details. Indeed, I will probably incorporate some of it in my teaching next fall. I think your analysis is rock solid.*

Dianne M. Nast, Partner, RodaNast, P.C.:

> *Your testimony in Atlanta on Tuesday was exceptional. Rarely does one find a witness so well prepared, so thoughtful, careful and accurate in response to questioning, and so sincerely committed to careful preparation and accurate testimony. We are all appreciative of the extra effort you brought to the task. If the court rules in our favor, it will surely be in some measure as a result of your testimony. If the court does not rule in our favor, it certainly will not be as a result of anything you omitted or failed to do.*

Eugene I. Goldman, Partner, McDermott, Will & Emery LLP:

> *Hilsee was the defendant MCI's notice expert in two consolidated consumer class actions filed in Augusta, Georgia. Hilsee recognized that the socio-economics of class members indicated that the "traditional" media vehicles for notice, i.e., Wall Street Journal, would not reach many class members. Hilsee provided an affidavit and in-court testimony in favor of a plan that involved easy to understand notice in multiple publications. . . He also testified against an alternative plan presented by plaintiffs, which he felt was inferior. Hilsee was questioned by counsel for the parties as well as the Court. The Judge was impressed by Mr. Hilsee's expertise and accepted Mr. Hilsee's advice by ordering the implementation of Mr. Hilsee's notice plan.*

Darren E. Baylor, Associate Director, American Bar Association
Center for Continuing Legal Education:

> *Todd has definitely developed an entertaining and informative presentation on effective notice techniques that creatively connect the class member to class action claims. He presents his information in a way that educates and engages the audience while providing a refreshing perspective on claims notification.*

F. Paul Bland, Jr., Staff Attorney, Public Justice:

Hilsee has a deep and extensive knowledge of communications strategies and marketing for consumers. In several hotly contested cases, he has served as an expert witness on behalf of my clients, and his thoughtful, thorough and careful analyses stood up brilliantly through white-hot cross-examinations and probing. I've also seen a good deal of his work in the class action notice area, and he's a nationally recognized leader in that field.

Elizabeth J. Cabraser, Partner, Lieff, Cabraser, Heimann & Bernstein, LLP, at Tulane Law School, February 2008:

Todd Hilsee understands and appreciates the profound implications of notice on due process more than many, many lawyers. . . He is a notice expert; he is a communications expert; but his dedication to the idea of due process through communication transcends his work assignments and his living. . . He is a low key, personable person; very matter of fact about what he does. Do not be fooled; he is a giant in the field.

Robert J. Niemic, Senior Staff Attorney, Federal Judicial Center:

Todd Hilsee deserves one of the strongest endorsements I can give for his expertise on class action notice processes, his hands-on contributions to revising notices into plain language documents that now serve as "models" for the industry, and his colleagues' widespread recognition of him as a foremost world expert. All the work that Todd did for the Federal Judicial Center (my employer) was pro bono. His commitment to the cause of creating more understandable and complete notices for class action plaintiffs is unparalleled, in my experience. The resulting illustrative notices (posted at www.fjc.gov) reflect significant improvements, in terms of form, clarity, and plain language. Todd has had a huge national impact on the field of class actions that will endure and continue. He is enthusiastic and it's inspiring and enjoyable working with him.

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Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist, Chapter in treatise published by LexisNexis Accessing Justice – Appraising Class Actions Ten Years After Dutton, Hollick and Rumley, 23 SUPREME COURT LAW REVIEW 275 (2011). Chapter Author: Todd B. Hilsee, Treatise General Editor: Jasminka Kalajdzic

Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A Roadmap to Adequate Notice and Beyond, 12 CLASS ACTION LITIG. REP. 165-172 (2011). Author: Todd B. Hilsee

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U.S. Courts Overseeing Multi-National Class Actions: The Notice Issues are Everywhere, Course Materials, AMERICAN BAR ASSOCIATION, Annual CLE Conference (2010). Author: Todd B. Hilsee

Nationwide Class Actions: Shine a light on (another) bad notice, 9 CLASS ACTION LITIG. REP. 113-126 (2008); 36 PRODUCT SAFETY AND LIABILITY. REP. 346-59 (2008); AMERICAN BAR ASSOCIATION, 11th Annual Institute on Class Actions (2007). Author: Todd B. Hilsee

Seven Steps to a Successful Class Action Settlement, AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, CLASS ACTIONS TODAY 16 (2008). Authors: John B. Isbister, Todd B. Hilsee, & Carla A. Peak

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Case Experience

Todd B. Hilsee's case experience includes the following partial listing of cases (inclusive of all cases in which testimony provided at deposition or trial in past 4 years as marked with *):

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Accounting Outsourcing v. Verizon Wireless		M.D. La., No. 03-CV-161
Allen v. Monsanto		Cir. Ct. W.Va., No 041465
Allison v. AT&T		1st Jud. D.C. N.M., No. D-0101-CV-20020041
AMA v. United Healthcare	*	S.D.N.Y., 00-CV-2800
Anderson v. Attorney General of Canada		Supr. Ct., Newfoundland, No. 2007 01T4955CP
Andrews v. MCI		S.D. Ga., CV 191-175
Anesthesia Care Assocs. v. Blue Cross of Cal.		Cal. Super. Ct., No. 986677
Angel v. U.S. Tire Recovery		Cir. Ct. W. Va., No. 06-C-855
Avery v. State Farm Auto. Ins.		Cir. Ct. Ill., 97-L-114

Bacardi v. Bertram Yachts	*	S.D. Fla., No. 1:11-cv-21722
Baiz v. Mountain View Cemetery		Cal. Super. Ct., No. 809869-2
Baker v. Jewel Food Stores & Dominick's Finer Foods		Cir. Ct. Ill. Cook Co., No. 00-L-9664
Barbanti v. W.R. Grace		Wash. Super. Ct., 00201756-6
Bardessono v. Ford Motor		Wash. Super. Ct., No. 32494
Barnes v. Am. Tobacco		E.D. Pa., 96-5903
Barnett v. Wal-Mart Stores		Wash. Super. Ct., No. 01-2-24553-8 SEA
Beasley v. Hartford Insurance Co. of the Midwest		Cir. Ct. Ark., No. CV-2005-58-1
Beasley v. Reliable Life Insurance		Cir. Ct. Ark., No. CV-2005-58-1
Becherer v. Qwest Communications Int'l		Cir. Ct. Ill., Clair Co., No. 02-L140
Beringer v. Certegy Check Services		M.D. Fla., No. 8:07-CV-1434-T-23TGW
Billieson v. City of New Orleans		C.D.C. Orleans Par., La., No. 94-19231
Bond v. American Family Insurance		D. Ariz., CV06-01249-PXH-DGC
Bowden v. Phillips Petroleum		Dist. Ct., Ft. Bend Co., Tex., No. 107968
Bowling, et al. v. Pfizer		S.D. Ohio, No. C-1-91-256
Bownes v. First USA Bank		Cir. Ct. Ala., CV-99-2479-PR
Brookshire Bros. v. Chiquita		S.D. Fla., No. 05-CIV-21962
Brown v. Am. Tobacco		Cal. Super. Ct., J.C.C.P. 4042 No. 711400
Brown v. Credit Suisse First Boston		C.D. La., No. 02-13738
Bruno v. Quten		C.D. Cal., No. SACV 11-00173
Bryant v. Wyndham Int'l.		Cal. Super. Ct., Nos. GIC 765441, GIC 777547 (Consolidated)
Burgess v. Farmers Insurance		Dist. Ct. Comanche Co., Okla., CJ-2001-292
Carnegie v. Household Int'l		N. D. Ill., No. 98-C-2178

Carson v. Daimler Chrysler		W.D. Tenn., No. 99-2896 TU A
Carter v. North Central Life Ins.	*	Ga. Super. Ct., No. SU-2006-CV-3764-6
Castano v. Am. Tobacco		E.D. La., CV 94-1044
Castillo v. Mike Tyson		N.Y. Super. Ct., 114044/97
Cazenave v. Sheriff Charles C. Foti		E.D. La., No. 00-CV-1246
Chambers v. Daimler Chrysler		N.C. Super. Ct., No. 01:CVS-1555
Chapman v. Butler & Hosch, P.A.		2nd Jud. Cir. Fla., No. 2000-2879
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Clark v. Pfizer	*	C.P. Pa. Phila. Co., No. 9709-3162
Clark v. Tap Pharmaceutical Prods.		5th Dist. App. Ct. Ill., No. 5-02-0316
Clearview Imaging v. Progressive Consumer Ins.		Cir. Ct. Fla. Hillsborough Co., No. 03-4174
Cotten v. Ferman Mgmt. Servs.		13th Jud. Cir. Fla., No. 02-08115
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Davis v. Am. Home Products	*	Civ. D. Ct. La., No. 94-11684
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Desportes v. American General Assurance Co.	*	Ga. Super. Ct., No. SU-04-CV-3637

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Donnelly v. United Technologies		Ont. Super. Ct., No. 06-CV-320045CP
Efthimiou v. Cash Money	*	Ct. of Queens Bench, Alberta, No. 1001-04191
Ervin v. Movie Gallery		Tenn. Ch. Fayette Co., No. CV-13007
Fields v. Great Spring Waters of Am.		Cal. Super. Ct., No. 302774
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Fisher v. Virginia Electric & Power Co.		E.D. Va., No 3:02-CV-431
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Friedman v. Microsoft		Ariz. Super. Ct., No. CV 2000-000722
Froeber v. Liberty Mutual Fire Ins.	*	Cir. Ct. Ore., No. 00C15234
Fry v. Hoechst Celanese		Cir. Ct. Fla., 95-6414 CA11
Fulghum v. Embarq		D. Kansas, No. 07-CV-2602
Gardner v. Stimson Lumber		Wash. Super. Ct., No. 00-2-17633-3SEA
Garrett v. Hurley State Bank		Cir. Ct. Miss., No. 99-0337
Gastke v. Louisiana Clerks of Court		E.D. La., 2:06 CV0257
Gaynoe v. First Union		N.C. Super. Ct., No. 97-CVS-16536
George v. Ford Motor		M.D. Tenn., No. 3:04-0783
Goldenberg v. Marriott PLC		D. Md., PJM 95-3461
Gordon v. Microsoft		4th Jud. D. Ct. Minn., No. 00-5994
Govt. Employees Hospital Assoc. v. Serono		D. Mass., 06-CA-10613-PBS
Gray v. New Hampshire Indemnity		Cir. Ct. Ark., No. CV-2002-952-2-3

Grays Harbor v. Carrier Corporation		W.D. Wash., No. 05-05437-RBL
Gunderson v. F.A. Richard & Associates	*	14th Jud. D. Ct. La., No. 2004-2417-D
Gunderson v. Focus Healthcare Management	*	14th Jud. D. Ct. La., No. 2004-2417-D
Gustafson v. Bridgestone/Firestone		S.D. Ill., Civil No. 00-612-DRH
Gutterman v. Am. Airlines		Cir. Ct. Ill., 95CH982
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Harp v. Qwest Communications		Circ. Ct. Ore., No. 0110-10986
Harper v. Equifax		E.D. Pa., No. 2:04-CV-03584-TON
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Hill v. Galaxy Cablevision		N.D. Miss., No. 1:98CV51-D-D
Hill v. State Farm Mutual Auto Ins.		Cal. Super. Ct., No. BC 194491
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Homeless Shelter Compensation Program		City of New York
Hunsucker v. American Standard Ins. Co. of Wisconsin		Cir. Ct. Ark., No. CV-2007-155-3
In re Alstom SA Securities Litig.		S.D. N.Y., No. 03-CV-6595 VM
In re Amino Acid Lysine Antitrust Litig.		N.D. Ill., MDL No. 1083
In re Babcock and Wilcox Co.		E.D. La., 00-10992
In re Bausch & Lomb Contact Lens Litig.		N.D. Ala., 94-C-1144-WW
In re Baycol Litig.		D. Minn., MDL No. 1431
In re Bolar Pharm. Generic Drugs Consumer Litig.		E.D. Pa., MDL No. 849
In re Bridgestone Securities Litig.		M.D. Tenn., No. 3:01-CV-0017

In re Bridgestone/Firestone Tires Prods. Liability Litig.		S.D. Ind., MDL No. 1373
In re Columbia/HCA Healthcare		M.D. Tenn., MDL No. 1227
In re Conagra Peanut Butter Products Liability Litig.		N.D. Ga., 1:07-MDL-1845 (TWT)
In re Domestic Air Transp. Antitrust Litig.		N.D. Ga., MDL No. 861
In re Dow Corning Corp.		E.D. Mich., 95-20512-11-AJS
In re Educ. Testing Serv. PLT 7-12 Test Scoring Litig.	*	E.D. La., MDL-1643
In re Ephedra Prods. Liability Litig.		D. N.Y., MDL-1598
In re Estate of Ferdinand Marcos		D. Hawaii, MDL No. 840
In re Factor Concentrate Blood Prods. Litig.		N.D. Ill., MDL No. 986
In re The Flintkote Company		D. Del. Bankr., No. 04-11300
In re Ford Ignition Switch Prods. Liability Litig.		D. N.J., 96-CV-3125
In Re Ford Motor Co. E-350 Van Products Liability Litigation	*	D.N.J., MDL No. 1687
In re Ford Motor Co. Vehicle Paint Litig.		E.D. La., 95-0485, MDL No. 1063
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In re Guidant Corp. Plantable Defibrillators Products Liab. Litig.		D. Minn., MDL No. 05-1708 (DWF/AJB)
In re High Sulfur Content Gasoline Prods. Liability Litig.	*	E.D. La., MDL No. 1632
In re Holocaust Victims Assets Litig.		E.D. N.Y., CV-96-4849
In re Lupron Marketing & Sales Practices Litig.		D. Mass., MDL No.1430
In re Mutual Funds Investment Litig.		D. Md., MDL No. 1586
In re Oil Spill by the Oil Rig "Deepwater Horizon"		E.D. La., MDL No. 2179
In re PA Diet Drugs Litig.		C.P. Pa. Phila. Co., No. 9709-

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In re Parmalat Securities Litig.		S.D. N.Y., MDL No. 1653 (LAK)
In re Pharmaceutical Industry Average Wholesale Price Litig.		D. Mass., MDL 1456
In re Pittsburgh Corning		Bankr. W.D. Pa., No. 00-22876-JKF
In re PRK/LASIK Consumer Litig.		Cal. Super. Ct., CV-772894
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In re Residential Schools Class Action Litig.	*	Ont. Super. Ct., 00-CV-192059 CPA
In re Royal Ahold Securities and "ERISA" Litig.		D. Md., MDL 1539
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In re Serzone Prods. Liability Litig.		S.D. W. Va., MDL No. 1477
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In re Solutia Inc.		S.D. N.Y., No. 03-17949-PCB
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In re Television Writers Cases		Cal. Super. Ct., LA County, NO. BC 268 836
In re Texaco		S.D. N.Y. Nos. 87 B 20142, 87 B 20143, 87 B 20144.
In re TJX Companies Retail Security Breach Litig.		D. Mass., MDL No. 1838
In re Tobacco Cases II		Cal. Super. Ct., J.C.C.P. No. 4042
In re Unum Provident Corp.		D. Tenn. No. 1:03-CV-1000
In re USG Corp.		Bankr. D. Del., No. 01-02094-RJN
In re Vivendi Universal, S.A. Securities Litig.		S.D. N.Y., No. 02-CIV-5571 RJH
In re W.R. Grace & Co.	*	Bankr. D. Del., No. 01-01139-JJF

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In re: Whirlpool Corp. Frontloading Washer Products Liability Litigation	*	N.D. Ohio, 1:08-wp-65000
Int'l Commission on Holocaust Era Ins. Claims – Worldwide Outreach Program		Former Secretary of State Lawrence Eagleburger Commission
Int'l Org. of Migration – German Forced Labour Compensation Programme		Geneva, Switzerland
Jacobs v. Winthrop Fin. Assocs.		D. Mass., 99-CV-11363
Johnson v. Ethicon		Cir. Ct. W. Va. Kanawha Co., Nos. 01-C-1530, 1531, 1533, 01-C-2491 to 2500
Johnson v. Norwest Fin. Alabama		Cir. Ct. Ala., CV-93-PT-962-S
Johnson v. Progressive		Cir. Ct. Ark., No. CV-2003-513
Jones v. Hewlett-Packard		Cal. Super. Ct., No. 302887
Jordan v. A.A. Friedman		M.D. Ga., 95-52-COL
Kalhammer v. First USA		Cir. Ct. Cal., C96-45632010-CAL
Kapustin v. YBM Magnex Int'l		E.D. Pa., 98-CV-6599
Kellerman v. MCI		Cir. Ct. Ill., 82 CH 11065
Kent v. Daimler Chrysler		N.D. Cal., No. C01-3293-JCS
Kline v. Progressive		Cir. Ct. Ill., Johnson Co., No. 01-L-6
Krebs v. Safeco	*	Wash. Super. Ct., No. 10-2-17373-1 SEA
Kunhel v. CNA Ins. Companies		N.J. Super. Ct., ATL-C-0184-94
Larson v. AT&T Mobility	*	D.N.J., 07-05325
Lee v. Allstate		Cir. Ct. Ill., Kane Co., No. 03 LK 127
Lee v. Carter-Reed		N.J. Super. Ct., No. UNN-L-3969
Leff v. YBM Magnex Int'l		E.D. Pa., 95-CV-89
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Lozano v. AT&T Wireless		C.D. Cal., CV-02-00090
Luikart v. Wyeth Am. Home Products		Cir. Ct. W. Va., No. 04-C-127
Madsen v. Prudential Federal Savings & Loan		3rd Jud. Dist. Ct. Utah, No. C79-8404
Mangone v. First USA Bank		Cir. Ct. Ill., 99AR672a
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McCurdy v. Norwest Fin. Alabama		Cir. Ct. Ala., CV-95-2601
McManus v. Fleetwood Enter.		D. Ct. Tex., No. SA-99-CA-464-FB
McNall v. Mastercard		13th Tenn. Jud. Dist. Ct. Memphis
Meckstroth v. Toyota Motor Sales	*	24th Jud. D. Ct. La., No. 583-318
Meers v. Shell Oil		Cal. Super. Ct., M30590
Mehl v. Canadian Pacific Railway		D. N.D., No. A4-02-009
Microsoft I-V Cases		Cal. Super. Ct., J.C.C.P. No. 4106
Miller v. Basic Research		D. Utah, No. 2:07-cv-00871
Morris v. Liberty Mutual Fire Ins.		D. Okla., No. CJ-03-714
Morrow v. Conoco	*	D. La., No. 2002-3860
Mostajo v. Coast Nat'l Ins.		Cal. Super. Ct., No. 00 CC 15165
Moyle v. Liberty Mutual		S.D. Cal., No. 10cv2179 DMS
Multinational Outreach - East Germany Property Claims		Claims Conference
Munsey v. Cox Communications		Civ. D. Ct., La., No. 97 19571
Murray v. IndyMac Bank. F.S.B.		N.D. Ill., No. 04 C 7669
Myers v. Rite Aid of PA		C.P. Pa., No. 01-2771
Naef v. Masonite		Cir. Ct. Ala., CV-94-4033
National Assoc. of Police Orgs. v.		Cir. Ct. Mich. Antrim Co., 04-

Second Chance Body Armor		8018-NP
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Nature Guard Cement Roofing Shingles Cases		Cal. Super. Ct., J.C.C.P. No. 4215
Navarro-Rice v. First USA		Cir. Ct. Ore., 9709-06901
Nichols v. SmithKline Beecham		E.D. Pa., No. 00-6222
Oborski v. United Healthcare		S.D.N.Y., 00-CV-7246
Olinde v. Texaco		M.D. La., No. 96-390
Orrill v. Louisiana Citizens	*	C.D.C. Orleans Par., La., No. 2005-11720
Oubre v. Louisiana Citizens	*	24th Jud. Dist. Ct., La., No. 625-567
Palace v. Daimler Chrysler		Cir. Ct. Ill., Cook Co., No. 01-CH-13168
Parsons/Currie v. McDonalds Rest's.		Ont. Sup. Ct., No. 02-CV-235958CP/No. 02-CV-238276
Paul and Strode v. Country Mutual Ins.		Cir. Ct. Ill., 99-L-995
Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.		Me. Super. Ct., No. CV-00-015
Peek v. Microsoft		Cir. Ct. Ark.., No. CV-2006-2612
Pennington v. Coca Cola		Cir. Ct. Mo. Jackson Co., No. 04-CV-208580
Perrine v. E.I. Du Pont De Nemours		Cir. Ct. W. Va., No. 04-C-296-2
Perry v. Mastercard Int'l		Ariz. Super. Ct., No. CV2003-007154
Peters v. First Union Direct Bank		M.D. Fla., No. 8:01-CV-958-T-26 TBM
Peterson v. State Farm Mutual Auto. Ins.		Cir. Ct. Ill., No. 99-L-394A
Peyroux v. The United States of America		E.D. La., No. 06-2317
Providian Credit Card Cases		Cal. Super. Ct., J.C.C.P. No. 4085

Ragoonanan v. Imperial Tobacco		Ont. Super. Ct., No. 00-CV-183165 CP
Raysick v. Quaker State Slick 50		Dist. Tex., 96-12610
Reynolds v. Hartford Financial Group		D. Ore., No. CV-01-1529 BR
Richison v. Am. Cemwood		Cal. Super. Ct., No. 005532
Robinson v. Marine Midland		N.D. Ill., 95 C 5635
Rogers v. Clark Equipment		Cir. Ct. Ill., No. 97-L-20
Rolnik v. AT&T Wireless Servs.		N.J. Super. Ct., No. L-180-04
Rosenberg v. Academy Collection Service		E.D. Pa., No. 04-CV-5585
Salkin v. MasterCard Int'l		Pa. C.P., No. 2648
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Santos v. Government of Guam		D. Guam, No. 04-00049
Sauro v. Murphy Oil USA		E.D. La., No. 05-4427
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Singleton v. Hornell Brewing Co.		Cal. Super. Ct., No. BC 288 754
Small v. Lorillard Tobacco		N.Y. Super. Ct., 110949/96
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Spence v. Microsoft		Cir. Ct. Wis. Milwaukee Co., No. 00-CV-003042
Spitzfaden v. Dow Corning		La. Civ. Dist. Ct., 92-2589
Splater v. Thermal Ease Hydronic Systems		Wash. Super. Ct., 03-2-33553-3-SEA
Springer v. Biomedical Tissue		Cir. Ct. Ind. Marion Co., No.

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St. John v. Am. Home Products		Wash. Super. Ct., 97-2-06368
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Sweeten v. American Empire Insurance	*	Cir. Ct. Ark., No. 2007-154-3
Talalai v. Cooper Tire & Rubber		N.J. Super. Ct., Middlesex County, No. MID-L-8839-00 MT
Tawney v. Columbia Natural Res.		Cir. Ct. W. Va. Roane Co., No. 03-C-10E
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Thibodeau v. Comcast		E.D. Pa., No. 04-CV-1777
Thibodeaux v. Conoco Philips		D. La., No. 2003-481
Thompson v. Metropolitan Life Ins.		S.D. N.Y., No. 00-CIV-5071 HB
Ting v. AT&T		N.D. Cal., No. C-01-2969-BZ
Tobacco Farmer Transition Program		U.S. Dept. of Agric.
Tuck v. Whirlpool & Sears, Roebuck		Cir. Ct. Ind. Marion Co., No. 49C01-0111-CP-002701
Turner v. Murphy Oil USA	*	E.D. La., No. 2:05-CV-04206-EEF-JCW
Walker v. Rite Aid of PA		C.P. Pa., No. 99-6210
Walker v. Tap Pharmaceutical Prods.		N.J. Super. Ct., No. CV CPM-L-682-01
Walls v. Am. Tobacco		N.D. Okla., 97-CV-218-H
Walton v. Ford Motor		Cal. Super. Ct., No. SCVSS 126737
Webb v. Liberty Mutual Insurance		Cir. Ct. Ark., No. CV-2007-418-3
Weber v. Mobil Oil	*	Dist. Ct. Okla., No. CJ-2001-53

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West v. Carfax		Ohio C.P., No. 04-CV-1898 (ADL)
West v. G&H Seed		27th Jud. D. Ct. La., No. 99-C-4984-A
Westman v. Rogers Family Funeral Home		Cal. Super. Ct., No. C-98-03165
Whetman v. IKON		E.D. Pa., Civil No. 00-87
White v. Washington Mutual		4th Jud. D. Ct. Minn., No. CT 03-1282
Williams v. Weyerhaeuser		Cal. Super. Ct., CV-995787
Wilson v. Servier Canada		Ont. Super. Ct., 98-CV-158832
Withrow v. Enterprise		Cir. Ct. of St. Louis, Mo., No. 10SL-CC01712
Wong v. TJX		Ont. Super. Ct., No. 07-CT-000272CP
Woodard v. Andrus		E.D. La., 2:03 CV2098
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Zarebski v. Hartford Insurance Co. of the Midwest	*	Cir. Ct. Ark., No. CV-2006-409-3

Work Experience

The Hilsee Group LLC	Feb. 2008 - Present	Principal
Hilsoft Notifications	Oct. 1994 – Feb. 2008	President
Foote Cone & Belding	1987 – 1994	Account Director
Greenwald/Christian	1985 – 1987	Account Executive
McAdams & Ong	1983 – 1985	Media Planner

Education

The Pennsylvania State University 1982 B.S. Marketing Management

EXHIBIT 38

BNA, INC.

CLASS ACTION LITIGATION

BNA Employee-Owned Since 1947

REPORT

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In November 2010, the Federal Judicial Center (FJC) issued two new tools—a notice checklist and a plain language guide—to help attorneys and judges create effective notices and notice plans. The Checklist provides overall guidance on notice and notice plan development, and provides guidance for improving class actions claims processes, writes class action notice expert Todd B. Hilsee in this BNA Insight. He analyzes the Checklist and Guide and suggests why the Checklist and Guide are essential to class action practice.

Analysis of the FJC's *2010 Judges' Class Action Notice and Claims Process Checklist and Guide*: A New Roadmap to Adequate Notice and Beyond

BY TODD B. HILSEE

In November 2010, the Federal Judicial Center (FJC) issued two new tools—a notice checklist and a plain language guide—to help attorneys and judges create effective notices and notice plans. The Checklist provides overall guidance on notice and notice plan development, and provides guidance for improving class actions claims processes. A graphical plain language notice Guide explains and highlights the important features of the FJC's previously-issued illustrative "plain language" notices.[1] The Checklist and Guide are available as one document, known as the *2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at the Federal Judicial Center's website.[2]

At the same time, the FJC updated its popular text, *Managing Class Action Litigation: A Pocket Guide for*

[1] In 2001-2003, the FJC created illustrative notice forms to demonstrate ways that "plain" language and graphic design can be used when drafting class action notices pursuant to Fed. R. Civ. 23(c)(2) requiring "clear, concise, easily understood language." *See* http://www.fjc.gov/public/home.nsf/pages/376, last visited January 25, 2010. The author of this article collaborated to write and design the illustrative notices with the FJC's Research Division staff: Thomas E. Willging, Shannon R. Wheatman, Ph.D., and Robert J. Niemic; and with Prof. Terri R. LeClercq, Univ. of Texas School of Law. The Research Division Director was James B. Eaglin.

Judges, by issuing its Third Edition (2010), covering a broad gamut of issues that federal judges face when overseeing class action cases. The 2010 release ''includes an expanded treatment of the notice and claims processes.''[3]

The Checklist and Guide were developed under the leadership of FJC Director Hon. Barbara J. Rothstein, and were a joint initiative of the FJC's Education and Research divisions.[4]

This article will analyze the Checklist and Guide and suggest why the Checklist and Guide are essential to class action practice. It will focus on notice dissemination and other key aspects of the Checklist more than the somewhat self-explanatory ''Plain Language'' Guide, because notice content issues have been covered extensively in the past.[5] The opinions in this paper reflect those of the author, and do not necessarily reflect the opinions of the FJC or the other notice experts cited or who were reached for comment on the Checklist and Guide for this article.

A Basis for FJC Notice Guidance

The FJC develops and publishes such tools in furtherance of the Center's statutory mission to develop educational materials for the judicial branch. The FJC has provided extraordinary thought leadership in the area of due process and notice to class members. It is appropriate that the FJC expanded its notice guidance. Notice is critical because often millions of people are affected at once by a judge's decision in a class action case. c[6]

Revised Rule 23(c)(2) came about in 2003 because of the ''need to work unremittingly at the difficult task of communicating with class members.''[7] The illustrative notice forms do not provide guidance on the *whole* task of communicating, i.e., how to *disseminate* those notices. If a notice reaches only a small percentage of class members, a plain language notice cannot communicate with a large percentage the class. Such a notice effort cannot be said to represent the ''best notice practicable'' that Rule 23(c)(2) requires. Thus the Checklist and Guide provide ''best practices'' dissemination methods and planning guidance—borne out of actual class action practices that courts have sought and approved, and that leading experts have recommended, for many years.

Courts are increasingly aware, and have begun to accept, that class action claims rates today are persistently low.

Notice that does not reach class members does not afford them an opportunity to act on their rights, which in Rule 23(b)(3) actions include the right to opt out, and in the case of a settlement, the right to object to its terms or claim the benefits. Courts are increasingly aware, and have begun to accept, that class action claims rates today are persistently low.[8] Class actions that result in few class members receiving benefits, but lawyers seeking large fees, can result in public shame on the class action device and on the courts that bless them.[9] The FJC's Checklist and Guide also focus on claims processes, highlighting practical tips for courts to consider.

The FJC's Checklist comes amid heightened concerns about notice and claims issues, stemming from practical realities in today's class action practice.[10] Some 89 percent of notice approvals may occur not pursuant to classes being certified for trial, but in the context of settlement.[11] Both settling parties want the settlement approved. Neither party wants opt outs. In claims-made settlements, the defendant can minimize payments by seeking to minimize notice, and the plaintiffs' lawyers can negotiate ''clear sailing''[12] agreements on fee petitions regardless of class participation or actual payouts to the class.[13] Administrators are bidding for the settling parties notice business. Ironically, weaker notice averts objections that may draw the court's attention to the very weakness of a notice (or a settlement). Strong notice won't trigger claims for weak settlement benefits; but weak notice ensures a low claims rate.[14] Courts thus cannot rely on the traditional adversarial process during settlement to produce a notice plan that will achieve the best notice practicable. The FJC Checklist enlightens judges with best practices regardless of the parties' submissions.

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[2] *See* the Federal Judicial Center's website at http://www.fjc.gov/public/home.nsf/pages/376, last visited January 25, 2010.

[3] *Managing Class Action Litigation: A Pocket Guide for Judges*, Third Edition (2010), Hon. Barbara J. Rothstein and Thomas E. Willging, p. v, Preface.

[4] The FJC project team also included Senior Research Associate Thomas E. Willging assisted by the author of this article, Deputy Director John S. Cooke, Education Division Director Bruce M. Clarke, and Research Division Director James B. Eaglin. The FJC team was informed by many court-approved notices, notice plans, expert reports, scholarly articles, treatise materials, settlement agreements, and legal decisions.

[5] *See The Federal Judicial Center's Model Plain Language Class Action Notices: A New Tool for Practitioners and the Judiciary*, Todd B. Hilsee and Terri R. LeClercq (4 CLASS 182, 3/14/03); *See also The Plain Language Tool Kit for Class Action Notice*, Katherine Kinsella (3 CLASS 688, 10/25/02).

[6] ''Difficulties with the original rule. . . . Finally, the original rule did not squarely address itself to the question of the measures that might be taken during the course of the action to assure procedural fairness, particularly giving notice to members of the class. . . .'' Advisory Committee Notes on the 1966 Amendments accompanying Fed. R. Civ. P. 23.

[7] 2003 Advisory Committee notes accompanying Rule 23(c)(2).

[8] ''[W]hile response rates vary greatly depending on a variety of factors, [the claims administrator] has seen response rates range from less than five percent to more than twenty percent. Thus, the 5.5 percent response rate in this action is not outside the norm.'' *In re Initial Pub. Offering Secs. Litig.*, 2010 U.S. Dist. LEXIS 68702 (S.D.N.Y. July 7, 2010).

[9] *See e.g.*, *Strong v. BellSouth Telcoms. Inc.*, 173 F.R.D. 167, 172 (W.D. La. 1997).

[10] *See e.g.*, *True v. Am. Honda Motor Co.*, 2010 U.S. Dist. LEXIS 23545.

[11] A search of decisions on Lexis where courts make findings on the ''best notice practicable'' shows that only 11 percent do not involve settlement.

[12] Pocket Guide at page 20.

[13] Courts must still approve notices and fee petitions.

[14] *See Notice Expert Shines a Light on (Another) Bad Nationwide Class Action Notice,* Todd B. Hilsee, (9 CLASS 113, 2/8/08).

The Checklist and Guide do not contravene Rule 23, nor do they require judges or practitioners to apply each point in the same way in each case. Naturally, the information for judges to consider in the Checklist and Guide explains the practice of notice beyond the textual requirements of Rule 23, otherwise educational materials could only restate Rule 23. The considerations provide ample room for practitioners to create solutions that fit the circumstances of each case.

The Importance of Reaching the Class

The FJC Checklist brings judicial attention to a longstanding practice that provides courts with a threshold test to help them determine whether a given notice plan constitutes the best notice practicable: Is the notice calculated to reach a high percentage of the class?[15] The idea behind ''reach'' calculations is to provide courts with an objective basis for assessing adequacy by revealing how many class members, out of the universe of class members, will receive an opportunity to learn about their rights through notice.

The measurement of ''reach'' (and its companion metric ''frequency''),[16] and the methodology to calculate reach, is a decades-old, heavily-relied upon practice brought from the advertising and media field. As early as 1922, it was noted, ''But no amount of advertising is any good if you do not reach your public. Choose the best medium and, your money is well spent.''[17] When the modern class action rule was adopted in 1966, reach and frequency were already considered ''traditional dimensions of media'' in the communications field,[18] and by 1968, reach and frequency methodology was well seeded in communications planning: ''To advertisers, numbers are getting more and more important and not just the dollar figures either. They want to know how many and what people will be reached with a message and how often.''[19] A study showed that between 90–100% of ad agency media directors use reach and frequency planning.[20] A leading industry text states that reach and frequency statistics *must* be used.[21] A more complete discussion of industry reliance on reach has been published in law reviews.[22]

In class actions, leading notice experts have stood behind reach and frequency for years. The author of this article first opined on reach to a federal court in the early 1990's,[23] and subsequently testified and submitted expert reports citing reach in large as well as smaller value cases.[24] Over the years, other leading notice experts have similarly provided such data to courts. For example, Jeanne C. Finegan of the Garden City Group opined in *In re Nortel Networks Corp. Securities Litigation*, ''The [Reach and Frequency] calculations are used by advertising and communications firms world-wide, and have been adopted by the courts to measure the percentage of a target class that was likely reached by a legal Notice program.''[25] Gina M. Intrepido-Bowden of Anlaytics/BMC Group opined in *Plubell v. Merck*, ''We utilize advertising methodologies that have been accepted by courts to help them objectively determine the adequacy of notice programs—that is, calculating, where possible, the percentage of class members who will be reached with notice through audience coverage analyses.''[26] Katherine Kinsella, of KinsellaMedia LLC, opined in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, ''Reach and frequency have become the standard measurements for quantifying the effectiveness of media-based class action notice programs.''[27]

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[15] See FJC Checklist at pages 1-4.

[16] ''Reach is a measurement of audience accumulation. Reach tells planners how many different prospects or households will see the ad at least once over any period of time the planner finds relevant. Reach is usually expressed as a percentage of a universe with whom a planner is trying to communicate. . . . Frequency is a companion statistic to reach. . . . Frequency is a measure of repetition, indicating to what extent audience members were exposed to the same vehicle or group of vehicles.'' *Advertising Media Planning*, Jack Z. Sissors & Roger B. Baron, p. 92-99 (6th ed. 2002).

[17] *New Zealand Truth*, April 15, 1922, p.6.

[18] ''The traditional dimensions of media—reach, frequency and continuity—must be expanded to include a fourth dimension—impact.'' *Advertising: The Media Need the Message*, *New York Times*, September 9, 1967.

[19] *Advertising: Dialing In on the Right Numbers for Radio Industry*, *New York Times*, May 17, 1968, p.76.

[20] *See generally* Peter B. Turk, *Effective Frequency Report: Its Use And Evaluation by Major Agency Media Department Executives*, 28 Journal of Advertising Research 56 (1988); Peggy J. Kreshel et al., *How Leading Advertising Agencies Perceive Effective Reach and Frequency*, 14 Journal of Advertising 32 (1985).

[21] ''In order to obtain this essential information, we must use the statistics known as reach and frequency.'' *Guide to Media Research*, *American Advertising Agency Association*, 25 (1987).

[22] *See Do You Really Want Me To Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More than Just Plain Language: A Desire To Actually Inform*, Todd B. Hilsee, Shannon R. Wheatman and Gina M. Intrepido, 18 Georgetown Journal of Legal Ethics 1359, 1372 (2005).

[23] *See In re Domestic Air Transp. Antitrust Litig*., 141 F.R.D. 534, 548-549 (N.D. Ga. 1992), ''The reach of the publication program proposed by plaintiff was supported by Hilsee's testimony. The 143,000,000 figure was arrived at after elimination of duplication of readership among the print media by calculations performed using software available to Hilsee's industry for that purpose. Tr. at 95. The software is based on standard industry reach curves, mathematical models, population figures, and readership survey data.''

[24] *See Report of Notice Administrator Todd B. Hilsee on Analysis of Overall Effectiveness of Notice Plan*, Nov. 20, 1999, *In re Holocaust Victims Assets Litigation*, Case No. CV-96-4849, [Citing 90.4 percent reach of all Jewish adults worldwide, and country-by-country reach statistics: 93.8 percenta - 96.7 percent in key countries]. *See also Affidavit of Todd B. Hilsee on Completion of Settlement Notice Plan*, *In re Columbia/HCA Billing Practices Litigation*, MDL 1227, M.D. Tenn., May 28, 2003 [''low-value'' settlement, *i.e.*, no monetary payments for patient class members] ''Notice. . . effectively reached 70.3 percent of U.S. adults, and therefore, a similar percentage of Private Patient Class0 Members, as planned. Federal and state courts have relied on such data for many years, and my plans have regularly utilized such data to support media recommendations with statistical proof of audience coverage.''

[25] *Declaration of Jeanne C. Finegan, APR*, Doc. 69, *filed* Oct. 24, 2006, *In re Nortel Networks Corp. Securities Litigation*, Master File No. 05 MD 1659 (LAP), S.D.N.Y. [Reach Cited: 85.05- 95.35 percent]. *See also Declaration of Jeanne C. Finegan in Support of Motion for Final Approval of Class Action Settlements*, Doc. 333, Filed Oct. 15, 2010, *Stern v. ATT Mobility/Lozano v. ATT Wireless*, Case 2:05-cv-08842-CAS-CT, C.D. Cal.: ''[T]his comprehensive Notice Plan, as implemented, reached an estimated 78 percent of the potential Class Members in this case, or over 200,538,000 people in the United States. On average, potential class members had the opportunity to see this message 2.2 times. This program not only met, but exceeded the reach assumptions as described in my first Declaration and is the best notice practicable under the circumstances.''

[26] *Affidavit of Gina M. Intrepido-Bowden on Certification Notices and Notice Plan*, July 12, 2010, *Plubell v. Merck*, Case

Courts have recognized reach statistics when approving notice programs, even linking extraordinarily high reach percent to ''best notice practicable'' findings.[28] Reach standards are high. A Lexis study of published and reported decisions dating from 1993–2010, shows that when courts approve notice plans as constituting the ''best notice practicable,'' and they cite the reach statistics provided to them, the median reach is 87 percent and the average is 85.03percent.[29] All 36 published decisions found to meet those criteria were studied.[30] The cases reveal that courts received reach statistics as evidence from several different leading experts, including Hilsee, Finegan, and Kinsella. Together, these experts provided to the respective courts in the study cases reach statistics for a primary class demographic ranging from a low of 73 percent to a high of 96.2 percent. Also, public records reveal an exhibit showing 63 cases—large value and small value classes—in which reach statistics were cited to courts ranging from 70.3 percent to 99percent.[31] These findings, as well as other writings, are consistent with the FJC Checklist's slightly more conservative recommendation that a reach of between 70 percent and 95 percent is reasonable for a given class.[32]

Despite these experiences, often courts are not told what the reach calculation of the proposed notice program is, despite notice being as important, if not more so, than adequate representation.[33] This may be due to settlement dynamics, an oversight due to inexperience, lack of qualifications by an affiant, overburdened administrators, the complexity of a particular case, fear of disapproval, fear that more money than an administrator's client wishes to pay will be required to raise the reach to acceptable levels, or other factors. Courts are not always being provided with reach statistics unless and until an objection or collateral attack arises. By that time, the court has approved a notice regimen, and reissuing notice would be costly and, it is argued, confusing to class members.

Experts however, this author included, advise courts to receive reach calculations just as the FJC Checklist now advises.[34] For example, Katherine Kinsella writes in a 2010 textbook, ''The court must be satisfied *before* approving a notice program that an adequate percentage of the class will have an opportunity to see the notice.''[35]

When specific data has been lacking for a particular target group, experts have regularly calculated a knowable statistic: a reach percentage for a broader population that includes the target group, thereby giving the court the product of reliable principles and methods as an objective benchmark, avoiding speculative opinions

No. 04CV235817-01, Missouri Cir. Ct., Jackson Co. [citing reach of 79.8 percent]; *See also Affidavit of Gina M. Intrepido-Bowden on Class Certification Notice Plan*, Apr. 14, 2010, *Griffin v. Dell Canada Inc.*, No.: 07-CV-325223D2, Ont. Sup. Ct., [recommending supplemental notice if reach of initial phase does not exceed 70 percent].

[27] *Declaration Of Katherine Kinsella in Support of Motion for Final Approval of the Settlement with GlaxoSmithKline*, Doc. 4395, Filed June 22, 2007, *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, Case 1:01-cv-12257-PBS, D. Mass [Reach cited: 78.8percent- 82.0percent]; *See also Declaration of Katherine Kinsella in Support of Defendants' Memorandum of Law*, Doc. 175, Filed Mar. 13, 2004, *Azizian v. Federated Dept. Stores*, Case 4:03-cv-03359-SBA, N.D. Cal.: ''The Notice Plan outlined above delivered the following estimated reach and frequency measurements of the targeted audience: 91.3 percent of Cosmetics Purchasers were reached with an average exposure frequency of 4.4 times.'' *See also Affidavit of Katherine Kinsella*, Doc. 83-1, *filed* Dec. 6, 2007, *In Re Conagra Peanut Butter Products Liability Litigation*, Civil Action No. 1:07-mdl-1845 TWT, N.D. Ga.: ''Utilizing these well-established, widely-accepted, Court-approved and updated techniques, augmented by specific information expected to be provided in discovery, the reach of our target audiences and the number of exposure opportunities to the notice information will be adequate and reasonable under the circumstances.''

[28] ''Potential class members must receive the 'best notice that is practicable under the circumstances.' . . . Here, that requirement was met because 99.9 percent of potential class members received a concise notice that described the settlement benefits and the claims that class members would be required to release.'' *Shaffer v. Cont'l Cas. Co.*, 362 Fed. Appx. 627, 631 (9th Cir. Cal. 2010).

[29] Study on file with FJC.

[30] The study decisions are: 158 F.R.D. 314, 322 n.12; 1995 U.S. Dist. Lexis 11532; 185 F.R.D. 82, 91; 2000 U.S. Dist. LEXIS 12275; 256 B.R. 377, 417; 205 F.R.D. 369, 382 n.19; 216 F.R.D. 197, 203; 356 S.C. 644, 661; 2004 Bankr. LEXIS 2519; 226 F.R.D. 207, 226; 231 F.R.D. 52, 64; 2005 WL 2230314, 13; 2005 U.S. Dist. LEXIS 27011; 355 F. Supp. 2d 148, 163; 2005 U.S. Dist. Lexis 7061; 228 F.R.D. 75, 85; 221 F.R.D. 221, 231; 448 F.3d 201, 207-208; 447 F. Supp. 2d 612, 617; 2006 U.S. Dist. LEXIS 51439; 240 F.R.D. 269, 293; 534 F. Supp. 2d 500, 509; 2007 U.S. Dist. Lexis 37863; 472 F. Supp. 2d 830, 841; 2008 U.S. Dist. Lexis 110411, 13-14; 2009 U.S. Dist. LEXIS 119870; 362 Fed. Appx. 627, 631; 2010 U.S. Dist. LEXIS 41892; 2010 U.S. Dist. LEXIS 29042, 3-4; 2010 U.S. Dist. LEXIS 3270; Additional decisions from same court in same MDL excluded so as not to inflate the statistics: 2004 U.S. Dist. LEXIS 26754; 2003 U.S. Dist. LEXIS 18129; 2004 U.S. Dist. LEXIS 11841; 2000 WL 1222042, 36 n.16; 434 F. Supp. 2d 323, 336; and 352 F. Supp. 2d 533, 540.

[31] *See Larson v. ATT Mobility*, Case No. 10-1285, App. Ct. 3rd Cir., *Supplemental Hilsee Aff.* ¶ 13 & Exh. 1, Appellants Joint Index at 4381, 4392-4393.

[32] Note: Hee has testified that it is reasonable to reach greater than 70 percent of a given class, *See e.g.*, *In re Ford Motor Co. E-350 Van Products Liability Litigation (No. II)*, Master File No. 1687, D.N.J., June 23, 2009; Also Note: Kinsella writes, ''There is no court-mandated reach or frequency standard'' citing examples ranging from 70 percent to 97.5 percent, *A Practitioner's Guide to Class Actions*, Marcy Hogan Greer, Chapter 20.A (by Katherine Kinsella), page 529, 2010, American Bar Association.

[33] ''Of critical importance to a faithful analysis of the *Mullane* decision is the fact that the Court concluded that any notice at all—let alone notice reasonably calculated to reach as many interested parties as possible—was required. . . . Were adequate representation sufficient to meet the requirements of the Due Process Clause, no notice would have been required.'' *Rethinking the Adequacy of Adequate Representation*, Patrick Woolley, 75 Texas Law Review 571 (1997).

[34] FJC Checklist at page 4.

[35] *A Practitioner's Guide to Class Actions*, Marcy Hogan Greer, Chapter 20.A (by Katherine Kinsella), page 527, 2010, American Bar Association (emphasis in original); *See also*, *High-Profile Product Recalls Need More Than the Bat Signal*, Jeanne C. Finegan, IRMI Online, July 2001, ''The media plan should include the definition of the target audience, what percentage of the audience was reached, with what level of frequency. . . .''

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as to the sufficiency of the reach without a calculation as a basis, i.e., the type of opinions that Federal Rule of Evidence 702 seeks to prohibit.[36]

U.S. and Canadian practice has shown that the reach of even difficult and widely dispersed ''target groups'' can indeed be calculated, e.g., Aboriginal people, including First Nations, Inuit and Métis spread throughout Canada, including remote areas.[37]

If You Can't Notify, Can You Certify?

It appears that the FJC is serious about discouraging weak settlement notice. The Checklist suggests in response to the question, ''Is it economically viable to adequately notify the class? If the cost to reach and inform a high percentage of the class is not justified by a proposed settlement, an optout class may not be appropriate. Inability to support proper notice may also be evidence that the settlement is weak.''[38] In other words, the question is raised: If the lawyers want to resolve the claims of absent and unaware class members, but the settlement can't afford to tell a large percentage of them about it, can all those class members be deemed bound by their silence?[39] Can the ''circumstances'' that Rule 23 refers to, include that a proposed settlement renders it too cost-inefficient to provide the minimum due process protection that the opt-out device affords?[40] Allowing Rule 23(b)(3) cases that are large enough to be worth a lawyer's time, but where the claims are small enough to justify not informing all but a few members of the class, about a resolution that anyone in the rest of the class may object to (but binds them all anyway), may devolve class action practice into something unintended.[41]

The Checklist raises the question of whether courts more regularly applying such long-standing metrics as reach analyses will jeopardize ''low value'' class action cases, where the cost to reach a high percentage of the class may be out of proportion to the value of the case.

The Checklist thus raises the question of whether courts more regularly applying such long-standing metrics as reach analyses will jeopardize ''low value'' class action cases, where the cost to reach a high percentage of the class may be out of proportion to the value of the case. Several considerations come to mind in this regard. Does ''low value'' mean the *settlement* that the parties jointly propose? If so, the logic is circular, because the lawyers negotiate a settlement, and based on the amount that they have proposed, they argue that it is therefore too costly to notify a large percentage of the absent class to ascertain their views on the lawyers' proposal. On the other hand, if ''low value'' means the aggregate damages had the case been tried, a party would have to explain why fewer people deserve to know about their rights simply depending on how large the claims are. Does ''low value'' mean the value of *each* class member's claim? If so, then one must argue why the very type of case that exemplifies the need for class actions, is the type of case that can proceed without a substantial percentage of the class learning of their rights. Rule 23 does not deny opt out rights for small-claims classes while affirming opt out rights only for large-claims classes.[42]

Arguments framing notice in a minimal sense have become familiar: *Due process only requires what is reasonable; actual notice is not required.* But one must take a close look back at *Phillips Petroleum v. Shutts.* Notice was understood to have been received by those it bound. Besides excluding 3,500 who chose to opt out, another 1,500 were *deemed opted out* because their notice was undeliverable.[43] Courts today regularly bind all Rule 23(b)(3) class members who have not opted out, even when their mailings remain undeliverable, or who were otherwise unreached with notice. However they do so under the premise that the notice was the ''best practicable'' in part because it was ''reasonably calculated''[44] to inform the class member, and because the party giving notice showed that it tried very hard to inform the beneficiaries of notice, i.e., the party giving it

[36] ''The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted.'' Advisory Committee on Civil Rules Notes accompanying 2000 Amendment to Fed. R. Evid. 702.

[37] ''The Notice Plan estimated that Phase II efforts would reach 90.8 percent of Aboriginal people 25 years and older, an average of 5.1 times each. The Notice Plan estimated that Phase I and Phase II combined would reach 91.1 percent of Aboriginal people 25 years and older, an average of 6.3 times. As implemented, Phase II actually reached 95.1 percent of Aboriginal people 25 years and older, an average of 7.8 time each, and Phases I and II combined reached 95.3 percent of Aboriginal people 25 years and older an average of 9.1 times each.'' *Affidavit of Todd B. Hilsee on Completion of Phase II of Notice Programme and Adequacy of Phases I and II Combined*, Dec. 5, 2007, *In Re Residential Schools Class Action Litigation*, No. 00-CV-192059CP, Ontario Sup. Ct.

[38] FJC Checklist at page 1.

[39] In the aftermath of *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985), a prominent Rule 23 drafter once reminded readers that *Shutts* was premised on plaintiffs having ''received notice,'' and thus cautioned about lack of notice in the future: ''The serious theoretical issues of jurisdiction left open by *Shutts* include . . . notice that is not intelligible or not received. . . .'' Arthur R. Miller and David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1, 80 (1986).

[40] *Phillips Petroleum v. Shutts,* 472 U.S. 797, 812 (1985).

[41] ''It is a violation of due process for a judgment to be binding on a litigant . . . who has never had an opportunity to be heard.'' *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.7 (1979).

[42] To the contrary, *Shutts* dealt with 28,000 plaintiffs with ''minute amounts of interest on overdue natural gas royalty payments.'' William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC Law Review 709 (2006), discussing *Phillips Petroleum v. Shutts* 472 U.S. 797 (1985).

[43] *Phillips Petroleum v. Shutts,* 472 U.S. 797, 813 (1985).

[44] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (U.S. 1974).

was "desirous of actually informing the absentee," if the recipient wasn't actually reached.[45]

The opt-out system is a blessing that was premised on a presumption of adequate notice, perhaps more than practitioners today recall. When Rule 23 was amended in 1966, U.S. legal scholars like Marvin Frankel had trouble with the idea of binding absent class members who took no action, especially those who received only constructive notice.[46]

In practice, it has been hard to win an argument that suggests it is too expensive to notify class members properly ever since *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).[47] A class that can't be properly notified may not be manageable.[48]

Suggesting, as the Checklist does, that judges look for readily available reach statistics, perhaps using their own experts,[49] might be said, in settlement situations, to go beyond Rule 23(e), which does not articulate a "best practicable" standard, but rather a "reasonable manner" standard.[50] As the argument will go, notice under Rule 23(e) need not be as stringent as under Rule 23(c). The problems with this suggestion are three-fold. First, notice issued pursuant to a settlement is commonly the first notice issued to the class at all,[51] so in practice a notice under 23(e) must *also* comport with 23(c) at the same time. Second, even in the rare instances where a settlement notice under 23(e) comes after notice and opt-out has been given under 23(c), the court may refuse to approve a settlement unless a new opt-out opportunity is afforded,[52] thus injecting a circumstance that gave rise to the best practicable requirement in 23(c)(2). Thirdly, a settlement notice typically requires class members to take an action to participate in the settlement, i.e., filing a claim form, meaning in those very common situations, that notice should be as effective under 23(e) as under 23(c).[53]

As to the use of court experts, perhaps the FJC recognized that Fed. R. Evid. 706 already grants courts the power to appoint experts, and that consideration can be given to utilizing that authority to ensure adequate notice in today's class action atmosphere.

The Checklist Covers an Array of Related Issues

The Checklist may prove useful in other areas of class certification decisionmaking. For example, it illuminates the communications issue inherent in "ascertainability." Ascertainability is a test not present in the "text" of Rule 23, but a class must be "readily identifiable, such that the court can determine who is in the class."[54] The Checklist states, "Will unknown class members understand that they are included? If a well-written notice will leave class members in doubt as to whether they are included, consider whether the class definition, or the class certification, is appropriate."[55] For example, a class definition that must communicate a "state of mind" would not allow class members, or the court, to objectively know whether they are included.[56]

The Checklist may prove useful in other areas of class certification decisionmaking. For example, it illuminates the communications issue inherent in "ascertainability."

The Checklist will also help judges look at claims process issues to ensure that variables of inconvenience and burdensomeness are not injected into the already difficult effort to elicit responses from class members.

[45] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 315 (1950). Miller and Crump pointed out that "the requirement that notice be 'received' is followed, in the [Shutts] Court's opinion, by a statement that the notice must be 'reasonably calculated' to reach the claimant and by citation to the *Mullane* and *Eisen* cases, which do not require actual receipt." Arthur R. Miller and David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1, 19 (1986). It is worth noting that modern "reach" methodology focuses on "opportunity" and does not necessitate actual receipt by class members.

[46] "To a generation raised on *Pennoyer v. Neff*, it is a rather heady and disturbing idea to be told that people in faraway places who receive a letter or are 'described' in a newspaper 'notice' which does not come to their attention are exposed to a binding judgment unless they take some affirmative action to exclude themselves." Marvin E. Frankel, *Some Preliminary Observations Concerning Civil Rule 23*, 43 F.R.D. 39, 45 (1967). Note: The FJC Checklist deals with how to design notices to ensure they "come to the attention" of readers (FJC Checklist at page 1 and 5).

[47] "There is nothing in Rule 23 to suggest that the notice requirements can be tailored to fit the pocketbooks of particular plaintiffs." *Eisen* at 176.

[48] Fed. R. Civ. P. 23 (b)(3)(D): "The matters pertinent to the findings include. . . the difficulties likely to be encountered in the management of a class action." *See also In re Vivendi Universal S.A. Sec. Litig.*, 242 F.R.D. 76, 114 (S.D.N.Y. 2007) ("In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit [including] . . . publication notice in appropriate multi-national media to reach, in combination with direct mailings, a high percentage of the shareholders in each country").

[49] FJC Checklist at page 2.

[50] "The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." Fed. R. Civ. P. 23(e)(1)(B).

[51] *See* footnote 11.

[52] Fed. R. Civ. P. 23(e)(3).

[53] The Advisory Committee on Civil Rules clarified the meaning of "reasonable manner" under Rule 23(e) in the accompanying notes: "Reasonable settlement notice may require individual notice in the manner required by Rule 23(c)(2)(B) for certification notice to a Rule 23(b)(3) class. Individual notice is appropriate, for example, if class members are required to take action—such as filing claims—to participate in the judgment, or if the court orders a settlement opt-out opportunity under Rule 23(e)(3)."

[54] *See Charrons v. Pinnacle Group NY LLC*, 269 F.R.D. 221, 229 (S.D.N.Y. 2010).

[55] FJC Checklist at page 1.

[56] This is consistent with the FJC's Manual for Complex Litigation, which states, "Because individual class members must receive the best notice practicable and have an opportunity to opt out . . . . An identifiable class exists if its members can be ascertained by reference to objective criteria. The order defining the class should avoid subjective standards (e.g., a plaintiff's state of mind) or terms that depend on resolution of the merits (e.g., persons who were discriminated against)." *Manual for Complex Litigation*, Fourth, § 21.222.

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The Checklist advises, "Are all of the rights and options easy to act upon? There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance."[57] The Checklist provides almost a full page of detailed questions and suggestions in this regard.[58]

The Checklist Recognizes That There Is More Than One Approach

In several places, the Checklist recognizes that there is more than one approach to effective notice for a particular case. For example, while cautioning that e-mail does not provide the same delivery and readership assurances that postal mail does,[59] "[Postal] mailforwarding services reach movers, and the influx of 'SPAM' e-mail messages can cause valid e-mails to go unread," the Checklist does not preclude the use of e-mail notice, especially where class members already interact with the defendant via e-mail: "If e-mail will be used—*e.g.*, to active e-mail addresses the defendant currently uses to communicate with class members—be careful to require sophisticated design of the subject line, the sender, and the body of the message, to overcome SPAM filters and ensure readership."[60] Recommendations to enhance the design features of such a notice often do not cost one penny more, and greatly enhance reach and readership.

Notably, the Checklist makes no recommendation to spend more on notice than has been spent in the past. In fact, the Checklist advises, "Consider the balance between cost efficiency and effectiveness. A smaller publication notice will save money, but too small and it will not afford room for a noticeable headline, will not fit necessary information, and will not be readable if using fine print."[61] Of course, the cost to properly reach a class may be greater than laypeople perceive. If one expects to buy a new car for $1,000 and finds out that an average new car will cost more than 10 times that amount, are cars outrageously priced, or is the buyer ignorant?

Practitioners and Experts Weigh in on the FJC Checklist and Guide

While advocates and experts will appropriately debate particular points, or decide which methods work for particular cases, the FJC has published something consistent with what courts have approved and what experts and practitioners have cited. It appears that the Checklist will bolster the practice of notice and give some protection from today's "race to the bottom."

When reached for this article, Jeanne C. Finegan, the notice expert and senior vice president with the Garden City Group Inc., noted, "The FJC Checklist and Guide is a great double check for practitioners to make sure that all critical elements of a notice program are buttoned up. It really brings to the forefront, the importance of making sure that your notices are written in plain language, that they have all the elements required by Rule 23, and most importantly that notice is carefully designed to reach those who might be affected by a given action."[62]

Another notice expert, Gina M. Intrepido-Bowden, managing director, Legal Notice for BMC Group/ Analytics Inc., stated, "The FJC's Notice Checklist and Plain Language Guide is an extremely useful tool for the class action community. We distribute it at our Legal Notice Ethics CLE presentations. It supports the message we are communicating, that is, the importance of reaching a significant percentage of class members with a plain language message that will be noticed and understood."

Anya Verkhovskaya, senior EVP and COO of A.B. Data Ltd. Class Action Administration, remarked, "The FJC has issued a concise and straightforward means for courts to effectively analyze proposed notice and claims processes. We are pleased to see a Checklist like this being promulgated for use by the judges in the cases we administer. This will undoubtedly yield a faster path to a final outcome and increased efficiency overall."

The Checklist has already been the subject of position papers published for clients of defense law firms. One firm published a piece articulating a view that the "recommendations about the scope and expense of notice appear to go beyond the textual requirements of Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(2)," and suggesting that "Settling parties should be aware of the Checklist and prepared to explain both its tension with the text of Rule 23 and why, under the particular circumstances of their cases, rigid application of the Checklist would not be appropriate."[63] Another firm published on its blog, "This guide ought to be required reading for corporate counsel and class action defense counsel, for Judges are apt to utilize this resource on a going-forward basis when reviewing and passing upon certification orders relative to notices to a class."[64]

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[57] FJC Checklist at page 1.

[58] FJC Checklist at page 6.

[59] A recent Ohio appeals court decision makes this point regarding a national class action. "The problems of communication by e-mail are well-known. . . . Consumers change e-mail addresses frequently, in some instances more frequently than they move. Often there is no system of forwarding for e-mail." *West v. Carfax*, 2009 WL 5064143 (Ohio App. 11 Dist.) (citing the author of this article who appeared as an expert, and Jean Braucher, *Rent-Seeking and Risk-Fixing in the New Statutory Law of Electronic Commerce: Difficulties in Moving Consumer Protection Online*, 2001 WISCONSIN LAW REVIEW 527, 540.

[60] FJC Checklist at page 3.

[61] FJC Checklist at page 6.

[62] Ms. Finegan also notes that "a qualified expert needs to employ and cite all research that will be included in his or her findings. Importantly, it focuses attention back to Fed. R. Evid. 702, governing the admissibility of expert testimony, which now requires that such testimony be 'based upon sufficient facts or data,' that it be 'the product of reliable principles and methods,' and that the expert 'appl[y] the principles and methods reliably to the facts of the case.' She points out that a legal notice expert must use tools, calculations and industry-accepted, reasonably relied upon research . . . no speculation . . . . The Pocket piece is really a reminder that the expert can't speculate, or take shortcuts in reporting findings."

[63] *Federal Judicial Center Issues "Class Action Notice Checklist" With Problematic Positions*, Published by Debevoise & Plimpton LLP, January 13, 2011, *See* http:// www.debevoise.com/newseventspubs/publications/ detail.aspx?id=858c79e9-40e1-4568-a9a4-a1793c7d0b50, last visited January 30, 2011.

[64] *The Federal Judicial Center's New Forms For Class Action Notices*, Workplace Class Action Litigation, Published by Seyfarth Shaw LLP, December 13, 2010. *See* http:// www.workplaceclassaction.com/rule-23-issues/the-federal-

The Checklist and Guide has already been cited by a legal expert, Prof. Geoffrey C. Hazard Jr., in the *In re: Oil Spill* litigation: ''The importance of ensuring clear and accurate communications with class members has been of ongoing concern to the federal judiciary, having its most frequent expression in judicial insistence on and refinement of standards for the format and content of class action notices and other judicially-approved communications with class members. A contemporary example of these standards is the Federal Judicial Center's recent publication of its *2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. . . . This FJC Guide supplements the [*Manual for Complex Litigation] 4th* as an additional source of guidance, information, and standards that judges may apply to test the fairness, accuracy, and completeness not only of class notices that are submitted for their approval, but other communications by or on behalf of the parties before them with putative class members.''[65]

Parties should be prepared to answer the questions that judges will have on the importance and proper scope of notice in particular cases, and debate the ease or difficulty with which claims procedures can or should be set up. Debate will be fostered, including by courts now with a roadmap in front of them, prompting questions courts may pose to practitioners on issues that may not have otherwise been brought to their attention or spring from the record before them. Certainly the FJC should continue to update the Checklist as trends emerge. But courts have now been enabled with class action notice ''best practices.'' This can only result in better outcomes for class members and for the courts that protect their interests, as well as greater protection for parties through lasting court judgments.[66]

Todd B. Hilsee, of The Hilsee Group LLC, is a court-recognized class notice expert who speaks and writes on achieving due process through notice. He assisted the Federal Judicial Center on a *pro bono* basis in development of the tools discussed in this article. He can be reached at thilsee@hilseegroup.com.

judicial-centers-new-forms-for-class-action-notices/, last visited January 30, 2011.

[65] *Affidavit of Geoffrey C. Hazard Jr.*, January 17, 2011, *In Re: Oil Spill By The Oil Rig ''Deepwater Horizon'' In The Gulf Of Mexico, on April 20, 2010*, MDL No. 2179. Note: Prof. Hazard is Distinguished Professor of Law, Hastings College of the Law, University of California, Trustee Professor of Law, University of Pennsylvania. He has taught and practiced in the fields of Civil Procedure and Professional Ethics since 1958, and has co-authored treatises and law school casebooks in both fields.

[66] *Hospitality Mgmt. Assocs. v. Shell Oil Co.*, 356 S.C. 644, 662 (S.C. 2004), *cert. denied*, 543 U.S. 916 (U.S. 2004), ''The court further described the program as one unprecedented in 'reach, scope, and effectiveness' . . . . Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.''

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Major Checkpoints

- ❑ ***Will notice effectively reach the class?***
  The percentage of the class that will be exposed to a notice based on a proposed notice plan can always be calculated by experts. A high percentage (e.g., between 70–95%) can often reasonably be reached by a notice campaign.
- ❑ ***Will the notices come to the attention of the class?***
  Notices should be designed using page-layout techniques (e.g., headlines) to command class members' attention when the notices arrive in the mail or appear on the Internet or in printed media.
- ❑ ***Are the notices informative and easy to understand?***
  Notices should carry all of the information required by Rule 23 and should be written in clear, concise, easily understood language.
- ❑ ***Are all of the rights and options easy to act upon?***
  There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance.

Before Certification/Preliminary Settlement Approval

- ❑ ***Can any manageability problems from notice issues be overcome?***
  Consider potential problems in reaching and communicating with class members—e.g., language barriers, class size, geographic scope—and whether a notice plan will be able to overcome such problems.
- ❑ ***Can a high percentage of the proposed class be reached (i.e., exposed to a notice)?***
  Consider the breakdown of known and unknown class members, the age of any mailing lists, and the parties' willingness to spend necessary funds to fully reach the class.
- ❑ ***Is it economically viable to adequately notify the class?***
  If the cost to reach and inform a high percentage of the class is not justified by a proposed settlement, an opt-out class may not be appropriate. Inability to support proper notice may also be evidence that the settlement is weak.
- ❑ ***Will unknown class members understand that they are included?***
  If a well-written notice will leave class members in doubt as to whether they are included, consider whether the class definition, or the class certification, is appropriate.

Upon Certification/Preliminary Settlement Approval

- ❑ ***Do you have a "best practicable" notice plan from a qualified professional?***
  A proper notice plan should spell out how notice will be accomplished, and why the proposed methods were selected. If individual notice will not be used to reach everyone, be careful to obtain a first-hand detailed report explaining why not. See "Notice Plan" section below.

❑ ***Do you have unbiased evidence supporting the plan's adequacy?***
Be careful if the notice plan was developed by a vendor who submitted a low bid and might have incentives to cut corners or cover up any gaps in the notice program. In order to find the "best practicable" notice as Rule 23 requires, your own expert report may be advisable. This is especially true in the diminished adversarial posture in which settlement places the parties. It is also true at preliminary approval, before outsiders are aware of the proposed notice plan, which itself may limit the parties' awareness, in turn impacting your final approval decision.

❑ ***Have plain language forms of notice been created?***
Draft forms of the notices should be developed, in the shape, size, and form in which they will actually be disseminated, for your approval before authorizing notice to the class. See "Notice Documents" below.

❑ ***Will a qualified firm disseminate notice and administer response handling?***
There are many experienced firms that compete for administration of notice dissemination and claims and response handling. Appointing a qualified firm is important because errors may require re-notification, drain funds, delay the process, and threaten recognition of your final judgment.

Notice Plan

❑ ***Is the notice plan conducive to reaching the demographics of the class?***
The notice plan should include an analysis of the makeup of the class. There may be more women than men; it may skew older; it may be less educated than average. Each audience can be matched with the most efficient and effective methods of notice for reaching those people.

❑ ***Is the geographic coverage of the notice plan sufficient?***
Notice for a class action should take steps to reach people wherever they may be located, and also take into account where most class members reside.

- ***Is the coverage broad and fair? Does the plan account for mobility?***
  Class members choose to live in small towns as well as large cities. Be careful with notice exclusively targeted to large metropolitan newspapers. Class members move frequently (14–17% per year according to the U.S. Census Bureau), so purchasers in one state may now reside in another.

- ***Is there an extra effort where the class is highly concentrated?***
  Evidence may show that a very large portion of class members reside in a certain state or region, and notice can be focused there, while providing effective, but not as strong, notice elsewhere.

❑ ***Does the plan include individual notice?***
If names and addresses are reasonably identifiable, Rule 23(c)(2) requires individual notice. Be careful to look closely at assertions that mailings are not feasible.

- ***Did you receive reliable information on whether and how much individual notice can be given?***
  Consider an expert review of the information you have been provided regarding the parties' ability to give individual notice. The parties may have agreed to submit a plan that does not provide sufficient individual notice in spite of the rule.

- ❍ ***Will the parties search for and use all names and addresses they have in their files?***
  If the parties suggest that mailings are impracticable, look to distinguish between truly unreasonable searches (e.g., the defendant has nuggets of data that could be matched with third-party lists by a new computer program and several man-years) and situations where a search would be difficult but not unreasonably burdensome (e.g., lists reside directly in the defendant's records but are outdated or expensive to mail to because of the volume). Rule 23 generally requires the latter.
- ❍ ***Will outdated addresses be updated before mailing?***
  The plan should detail steps to update addresses before mailing, including postal service change-of-address records, and third-party address databases if the list is very old. Watch out for potentially ineffective "last known address" mailings.
- ❍ ***Has the accuracy of the mailing list been estimated after updating efforts?***
  Look for information that indicates how accurate the mailing addresses will be after the planned address updating effort.
- ❍ ***Has the percentage of the class to be reached by mail been calculated?***
  The parties should be able to indicate how great a percentage of the overall class will be reached by individual notice, so that the extent of any necessary additional notice can be determined.
- ❍ ***Are there plans to re-mail notices that are returned as undeliverable?***
  Even after updating addresses before mailing, mail will be returned as undeliverable. Further lookup tactics and sources are often available, and it is reasonable to re-mail these notices.
- ❍ ***Will e-mailed notice be used instead of postal mailings?***
  If available, parties should use postal mailing addresses, which are generally more effective than e-mail in reaching class members: mail-forwarding services reach movers, and the influx of "SPAM" e-mail messages can cause valid e-mails to go unread. If e-mail will be used—e.g., to active e-mail addresses the defendant currently uses to communicate with class members—be careful to require sophisticated design of the subject line, the sender, and the body of the message, to overcome SPAM filters and ensure readership.

❑ ***Will publication efforts combined with mailings reach a high percentage of the class?***
The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%. A study of recent published decisions showed that the median reach calculation on approved notice plans was 87%.

❑ ***Are the reach calculations based on accepted methodology?***
An affiant's qualifications are important here. Reach calculation methodology is commonly practiced in advertising and media-planning disciplines. Claims administrators are often accountants by training and may lack personal knowledge or the training to conduct reach analyses.

- ❍ ***Is the net reach calculation thorough, conservative, and not inflated?***
  Circulation figures for separate dissemination methods cannot simply be added to determine reach. Total audience must be calculated for each publication and the net must be calculated for a combination of publications. Be sure the reach calculation removes overlap between those people exposed to two or more dissemination methods (e.g., a person who receives a mailing may also be exposed to the notice in a publication).

- ❍ ***Do the reach calculations omit speculative reach that only might occur?***
  Watch for estimated reach calculations that are based in part on speculative notice that might occur, e.g., news coverage about the lawsuit or settlement. Often, these news articles do not ultimately explain class members' rights, and the content is not in the court's control.
- ❍ ***Is any Internet advertising being measured properly?***
  Audiences of Internet websites are measured by "impressions." Total, or "gross," impressions of the entire website do not reveal how many people will view the notice "ad" appearing periodically on a particular page. Inflated audience data via Internet ads is common. It is very expensive to reach a significant percentage of a mass audience with Internet banner ads. Watch for suggestions that Internet ads and social network usage can replace all other methods. Reach, awareness, and claims will likely be very low when such a program is complete.

- ❑ ***Is non-English notice necessary?***
  Consider the demographics of the class to determine whether notice is necessary in Spanish or another language. The number of class members whose native language is not English should guide you on whether to actively disseminate notice in other languages, or to simply make foreign language notices available at a website.
- ❑ ***Does the notice plan allow enough time to act on rights after notice exposure?***
  Class members need time to receive a notice by mail or in a publication. A minimum of 30 days is necessary from completed dissemination before deadlines, with 60–90 days preferred. This allows for re-mailings, fulfillment of requests for more information, and consideration of rights and options.
- ❑ ***Will key documents be available at a neutral website?***
  Class members should have access to information beyond the notice. Besides the summary notice and detailed notice (following the FJC examples at www.fjc.gov), it is reasonable to post the following documents at a neutral administrator's website dedicated to the case: the plaintiffs' complaint, the defendants' answer, your class-certification decision (in the event of a class certified for trial), and the settlement agreement and claim form (in the event of a settlement). Other orders, such as your rulings on motions to dismiss or for summary judgment, should ordinarily be made available as well.
- ❑ ***Can the class get answers from a trained administrator or from class counsel?***
  Even the best notice will generate questions from class members. A toll-free number call center, an interactive website staffed by trained administrators, and class counsel who are accessible to the people they represent are reasonable steps to help class members make informed decisions.

Notice Documents ***(also see Plain Language Notice Guide, below)***

- ❑ ***Have you approved all of the forms of the notices?***
  Before authorizing the parties to begin disseminating notices, you should ask for and approve all forms of notice that will be used. This includes a detailed notice; a summary notice; and information that will appear at the website and in any other form, such as an Internet banner, TV notice, and radio notice. See www.fjc.gov for illustrative notice forms for various cases. It is best to see and approve the forms of notice the way they will be disseminated, in their actual sizes and designs.

- [ ] ***Are the notices designed to come to the attention of the class?***
  The FJC's illustrative notices, as also described in the accompanying "***Plain Language Notice Guide***," explain how to be sure the notices are "noticed" by the casual-reading class member. With "junk mail" on the rise, and the clutter of advertising in publications, legal notices must stand out with design features long-known to communications pros.
  - ***Does the outside of the mailing avoid a "junk mail" appearance?***
    Notices can be discarded unopened by class members who think the notices are junk mail. A good notice starts with the envelope design, examples of which are at www.fjc.gov.
  - ***Do the notices stand out as important, relevant, and reader-friendly?***
    It is important to capture attention with a prominent headline (like a newspaper article does). This signals who should read the notice and why it is important. The overall layout of the notice will dictate whether busy class members will take time to read the notice and learn of their rights.
- [ ] ***Are the notices written in clear, concise, easily understood language?***
  Required by Rule 23 since 2003, it is also simply good practice to recognize that communicating legal information to laypeople is hard to do.
- [ ] ***Do the notices contain sufficient information for a class member to make an informed decision?***
  Consider the amount of information provided in the notice. Watch for omission of information that the lawyers may wish to obscure (such as the fee request) but that affects class members nonetheless.
- [ ] ***Do the notices include the Rule 23 elements? Even the summary notice?***
  Summary notices, whether mailed or published, encourage readership, and the FJC illustrative notices show that even summary notices can include all elements required by Rule 23(c)(2)(B). But an overly short summary notice, one that mostly points interested readers to a detailed notice, can result in most class members (who read only the summary notice) being unaware of basic rights.
- [ ] ***Have the parties used or considered using graphics in the notices?***
  Depending on the class definition or the claims in the case, a picture or diagram may help class self-identify as members, or otherwise determine whether they are included.
- [ ] ***Does the notice avoid redundancy and avoid details that only lawyers care about?***
  It is tempting to include "everything but the kitchen sink" in the detailed notice. Although dense notices may appear to provide a stronger binding effect by disclosing all possible information, they may actually reduce effectiveness. When excess information is included, reader burnout results, the information is not communicated at all, and claims are largely deterred.
- [ ] ***Is the notice in "Q&A" format? Are key topics included in logical order?***
  The FJC illustrative notices take the form of answers to common questions that class members have in class action cases. This format, and a logical ordering of the important topics (taking care to include all relevant topics) makes for a better communication with the class.
- [ ] ***Are there no burdensome hurdles in the way of responding and exercising rights?***
  Watch for notice language that restricts the free exercise of rights, such as onerous requirements to submit a "satisfactory" objection or opt-out request.

- ❑ ***Is the size of the notice sufficient?***
  Consider the balance between cost efficiency and effectiveness. A smaller publication notice will save money, but too small and it will not afford room for a noticeable headline, will not fit necessary information, and will not be readable if using fine print.

Claims Process

- ❑ ***Is a claims process actually necessary?***
  In too many cases, the parties may negotiate a claims process which serves as a choke on the total amount paid to class members. When the defendant already holds information that would allow at least some claims to be paid automatically, those claims should be paid directly without requiring claim forms.
- ❑ ***Does the claims process avoid steps that deliberately filter valid claims?***
  Close attention to the nature of a necessary claims process may help eliminate onerous features that reduce claims by making claiming more inconvenient.
- ❑ ***Are the claim form questions reasonable, and are the proofs sought readily available to the class member?***
  Watch for situations where class members are required to produce documents or proof that they are unlikely to have access to or to have retained. A low claims rate resulting from such unreasonable requirements may mean that your eventual fairness decision will overstate the value of the settlement to the class and give plaintiff attorneys credit for a greater class benefit than actually achieved.
- ❑ ***Is the claim form as short as possible?***
  A long, daunting claim form is more likely to be discarded or put aside and forgotten by recipients. Avoid replicating notice language or injecting legalistic terminology into the claim form which will deter response and confuse class members.
- ❑ ***Is the claim form well-designed with clear and prominent information?***
  Consider whether the claim form has simple, clearly worded instructions and questions, all presented in an inviting design. The deadlines and phone numbers for questions should be prominent.
- ❑ ***Have you considered adding an online submission option to increase claims?***
  As with many things, convenience is of utmost importance when it comes to claims rates. Today, many class members expect the convenience of one-click submission of claims. Technology allows it, even including an electronic signature. Claim forms should also be sent with the notice, or published in a notice, because many will find immediate response more convenient than going to a website.
- ❑ ***Have you appointed a qualified firm to process the claims?***
  You will want to be sure that the claims administrator will perform all "best practice" functions and has not sacrificed quality in order to provide a low price to win the administration business.

❑ ***Are there sufficient safeguards in place to deter waste, fraud, and/or abuse?***
The claims process, the claim form itself, and the claims administrator all play roles in ensuring that approved claims are valid claims, so that payments go to class members who meet the criteria. Closely monitoring the process, perhaps through a special master—or at least by requiring the parties to file full reports of claims made—is a good idea.

After Notice/Before Trial or Final Settlement Approval

❑ ***Did the notice plan achieve what it promised?***
Look for evidence that the notice plan reached the class members as well as anticipated.

❑ ***What is the reaction of the class?***
You will want to look at the number and nature of any objections, as well as the number of opt-outs and claims. Special note: waiting for the claims deadline to expire before deciding on final approval ensures that you can look at a full picture of the fairness of the settlement. By so doing you will be able to judge the actual value of the settlement to the class and calculate attorney fees in relation to that value.

❑ ***Have you made sufficient findings in the record?***
Consider, based on the evidence, making detailed findings so as to inhibit appellate review or to withstand a subsequent collateral review of your judgment.

❑ ***Is any subsequent claims-only notice necessary?***
If you find the settlement fair, reasonable, and adequate, but the number of claims is low, you may consider additional notice to the class after final approval.

Detailed Notice—First Page

• Page one is an overall summary of the notice. The objective is to use the fewest words to say the most. It is a snapshot of the case, of the reasons for the notice, and of the rights that class members have.

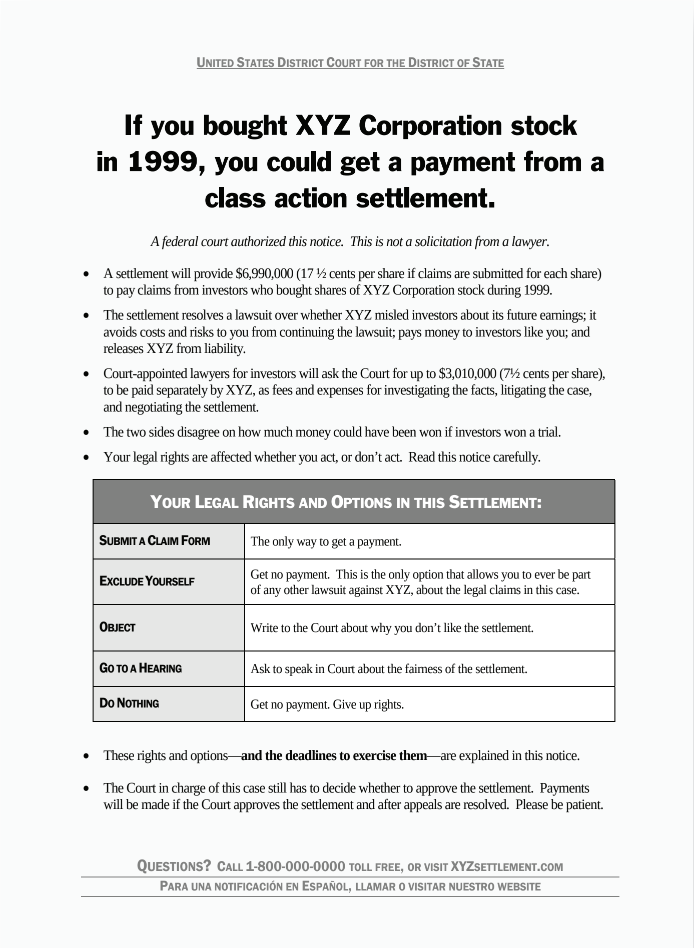
• The court's name at the top conveys the importance of the notice.

• A headline in a large font captures attention. It conveys what the notice is about and who is included, and it suggests a benefit to reading the entire notice.

• The words in italics below the headline communicate the official nature of the notice and provide a contrast from a lawyer's solicitation. Be sure to avoid a traditional legalistic case caption.

• Short bullet points highlight the nature of the case and the purpose of the notice. Bullet points also communicate who is included, the benefits available (if it is a settlement), and steps to be taken—identifying deadlines to observe. The first page should pique class members' interest and encourage them to read the entire notice.

• The table of rights explains the options available. These are deliberately blunt. Be careful to avoid redundancy with the information inside the notice.



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF STATE

If you bought XYZ Corporation stock in 1999, you could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide $6,990,000 (17 ½ cents per share if claims are submitted for each share) to pay claims from investors who bought shares of XYZ Corporation stock during 1999.
- The settlement resolves a lawsuit over whether XYZ misled investors about its future earnings; it avoids costs and risks to you from continuing the lawsuit; pays money to investors like you; and releases XYZ from liability.
- Court-appointed lawyers for investors will ask the Court for up to $3,010,000 (7½ cents per share), to be paid separately by XYZ, as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement.
- The two sides disagree on how much money could have been won if investors won a trial.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against XYZ, about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

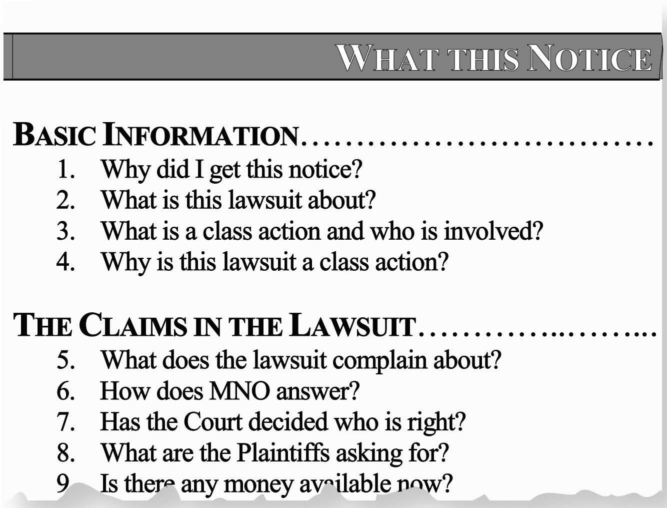
- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT XYZSETTLEMENT.COM

PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

• The first page should prominently display a phone number, e-mail address, or website where the class can obtain answers to questions.

• If appropriate for the class, include a non-English (e.g., Spanish) language note about the availability of a copy of the notice in that language.



WHAT THIS NOTICE

BASIC INFORMATION..............................
1. Why did I get this notice?
2. What is this lawsuit about?
3. What is a class action and who is involved?
4. Why is this lawsuit a class action?

THE CLAIMS IN THE LAWSUIT......................
5. What does the lawsuit complain about?
6. How does MNO answer?
7. Has the Court decided who is right?
8. What are the Plaintiffs asking for?
9. Is there any money available now?

Detailed Notice—Table of Contents

• Organize the topics into different sections and place the information in a logical order.

• A "Q&A" or "Answers to Common Questions" format helps class members find the information that is important to their decision-making process.

• Customize the topics to the facts of the case, but keep the overall notice short: 8–11 pages should be plenty even for complex matters.

• Don't avoid obvious questions (or answers) that class members will have.

EXCLUDING YOURSELF FROM THE SETTLEME

If you don't want a payment from this settlement, but you want to keep the right to sue
sue XYZ, on your own, about the legal issues in this case, then you must take steps to g
called excluding yourself—or is sometimes referred to as opting out of the settlement C

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you
excluded from *North v. XYZ*. Be sure to include your name, address, telephone numb
signature. You must mail your exclusion request postmarked no later than **Month 00,**

XYZ Exclusions
P.O. Box 0000
City, ST 00000-0000

If you ask to be excluded, you will not get any settlement payment, and you cannot ob
settlement. You will not be legally bound by anything that happens in this lawsuit.
sue (or continue to sue) XYZ in the future.

14. If I don't exclude myself, can I sue XYZ for the same thing later?

No. Unless you exclude yourself, you give up any right to sue XYZ for the claims th

Detailed Notice—Inside Content

- Short answers are best. Be sure that the text answers the question being asked and does not "spin" the information in a way to achieve a desired result—e.g., do not use language that encourages class members to accept a proposed settlement.

- Watch for redundant and lengthy information, but also substantive omissions. Be frank and open for better reader comprehension and, as a result, a stronger binding effect.

- Every detail does not belong in the notice, but all rights and options do. Explain settlement benefits and state the fees that the lawyers will seek. Watch for burdensome requirements that might inhibit objections, opt outs, or claims.

- Use plain language. You may closely follow the illustrative models at www.fjc.gov.

Summary Notice

- The summary notice should be short but comprehensive. Refer to all of the requirements of Rule 23 in a simple and clear summary fashion. Follow the FJC models wherever possible.

- The "Legal Notice" banner at the top helps stop a publisher from typesetting the word "advertisement" at the top, which would create a perception that the notice is a solicitation. Do not use the legal case caption style.

- The headline in large font captures the attention of readers who glance at the page. It flags what the notice is about, who is included, and it signals a benefit to be derived by reading the notice.

- The initial paragraphs provide a snapshot of all key information.

- Be sure to explain class membership in a simple way. Consider a graphic to help readers understand that they are included.

- Make a brief but clear reference to the substance of the case and the claims involved.

- Identify clearly what class members could get and how they would get it. These are the most common questions from class members.

LEGAL NOTICE

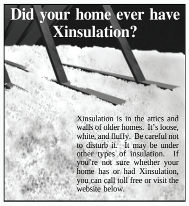
If you were exposed to asbestos in Xinsulation, you could get benefits from a class action settlement.

A settlement of a class action lawsuit affects you if you were ever exposed to asbestos in Xinsulation, Xbestos, or other ABC Corporation products. The settlement will pay people who are suffering from an asbestos-related disease, as well as those who were exposed but not sick, who need medical monitoring. If you qualify, you may send in a claim form to ask for payment, or you can exclude yourself from the settlement, or object.

The United States District Court for the District of State authorized this notice. The Court will have a hearing to consider whether to approve the settlement, so that the benefits may be paid.

Who's Affected?

Homeowners whose homes have or had Xinsulation (pictured and described to the right) are included in the settlement. Construction workers who installed, or worked around, Xbestos and other ABC products are also included, as described in separate notices. *You're a 'Class Member' if you were exposed to asbestos fibers in any ABC Corporation products any time before Month 00, 0000.*


Did your home ever have Xinsulation?
Xinsulation is in the attics and walls of older homes. It's loose, white, and fluffy. Be careful not to disturb it. It may be under other types of insulation. If you're not sure whether your home has or had Xinsulation, you can call toll free or visit the website below.

What's this About?

The lawsuit claimed that ABC made and sold products knowing that the asbestos fibers contained in them posed a danger to the health and safety of anyone exposed to them. The suit claimed that exposure increased the risk of developing Asbestosis, Mesothelioma, Lung Cancer, or other diseases that scientists have associated with exposure to asbestos. ABC denies all allegations and has asserted many defenses. The settlement is not an admission of wrongdoing or an indication that any law was violated.

What can you Get from the Settlement?

There will be an Injury Compensation Fund of $200 million for Class Members who have been diagnosed with an asbestos-related disease, and a $70 million Medical Monitoring Fund for checking the health of those who were exposed but are not currently suffering from an asbestos-related disease. Compensation for injuries will be in varying amounts for specific diseases:

Disease	Minimum	Maximum	Average
Mesothelioma	$10,000	$100,000	$20,000-$30,000
Lung Cancer	$5,000	$43,000	$9,000-$15,000
Other Cancer	$2,500	$16,000	$4,000-$6,000
Non-Malignant	$1,250	$15,000	$3,000-$4,000

Medical monitoring payments will be $1,000 or the amount of your actual medical expenses, whichever is greater.

How do you Get a Payment?

A detailed notice and claim form package contains everything you need. Just call or visit the website below to get one. **Claim forms are due by Month 00, 0000**. For an injury compensation claim, you'll have to submit a statement from a doctor that describes your current medical condition and confirms that you have one of the diseases in the box above. For a medical monitoring claim, you'll have to show proof of your exposure to an ABC asbestos-containing product.

What are your Options?

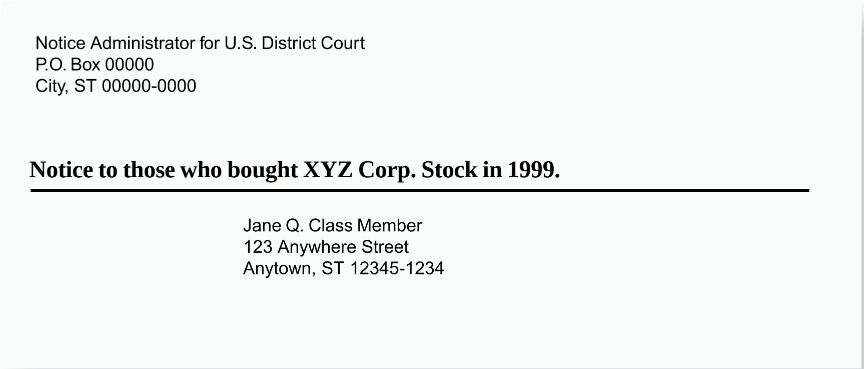
If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by **Month 00, 0000,** or you won't be able to sue, or continue to sue, ABC about the legal claims in this case. If you exclude yourself, you can't get a payment from this settlement. If you stay in the Class, you may object to the settlement by **Month 00, 0000**. The detailed notice describes how to exclude yourself or object. The Court will hold a hearing in this case (*Smith v. ABC Corp.*, Case No. CV-00-1234) on **Month 00, 0000,** to consider whether to approve the settlement and attorneys' fees and expenses totalling no more than $30 million. You may appear at the hearing, but you don't have to. For more details, call toll free 1-800-000-0000, go to www.ABCsettlement.com, or write to ABC Settlement, P.O. Box 000, City, ST 00000.

1-800-000-0000 **www.ABCsettlement.com**

- Be sure to include clear references to opt out, objection, and appearance rights. State the amount of the lawyers' fee request.

- Include a prominent reference to the call center and website.

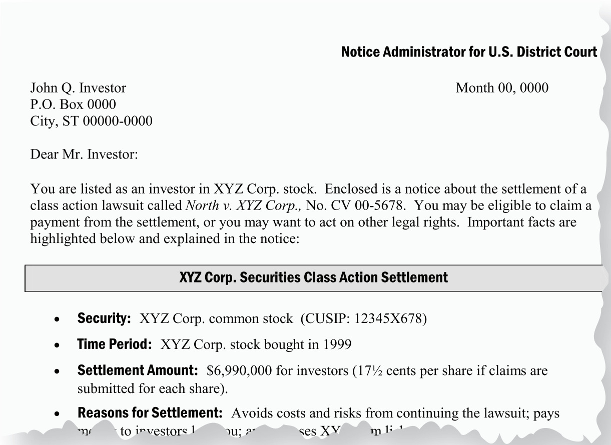
Outside of Mailing


Notice Administrator for U.S. District Court
P.O. Box 00000
City, ST 00000-0000

Notice to those who bought XYZ Corp. Stock in 1999.

Jane Q. Class Member
123 Anywhere Street
Anytown, ST 12345-1234

- Design the notice to make it distinguishable from "junk mail."
- A reference to the court's name (at the administrator's address) ensures that the class recognizes the notice's legitimacy.
- "Call-outs" on the front and back encourage the recipient to open and read the notice when it arrives with other mail.
- The call-out on the front (shown on example above) identifies what the notice is about and who is affected. On the back you may highlight the settlement benefits, or the rights involved.
- Use these techniques even if the mailed notice is designed as a self-mailer, i.e., a foldover with no envelope.


Notice Administrator for U.S. District Court

John Q. Investor
P.O. Box 0000
City, ST 00000-0000

Month 00, 0000

Dear Mr. Investor:

You are listed as an investor in XYZ Corp. stock. Enclosed is a notice about the settlement of a class action lawsuit called _North v. XYZ Corp._, No. CV 00-5678. You may be eligible to claim a payment from the settlement, or you may want to act on other legal rights. Important facts are highlighted below and explained in the notice:

XYZ Corp. Securities Class Action Settlement

- **Security:** XYZ Corp. common stock (CUSIP: 12345X678)
- **Time Period:** XYZ Corp. stock bought in 1999
- **Settlement Amount:** $6,990,000 for investors (17½ cents per share if claims are submitted for each share).
- **Reasons for Settlement:** Avoids costs and risks from continuing the lawsuit; pays

Cover Letter (when compliance with PSLRA is needed)

- Identify the court's administrator as the sender—this conveys legitimacy.
- The content should be very short. Remember that this is not the notice.
- A reference in bold type to the security involved flags the relevance of the letter.
- The bullet points track each PSLRA cover letter requirement. Avoid lengthy explanations that are redundant with the notice. Be blunt for clarity.
- The content in the FJC's PSLRA cover letter can simply be customized for the case at hand. The design encourages interest, reading, and action.

EXHIBIT 39

From: Steve Weisbrot
To: Todd B. Hilsee
Subject: Re: Potential Joint Venture
Date: Friday, January 9, 2015 7:29:43 PM

Todd,

Thank you for the quick reply. I will follow the course of action you suggest.

Hope you feel better soon.

Best,
Steve

Steven Weisbrot, Esq.
Executive Vice President
1801 Market Street, Suite 660
Philadelphia, PA 19103
856.236.7627 (M)
215.563.4116 (P)
Steve@angeiongroup.com
www.angeiongroup.com

Sent from my iPhone

On Jan 9, 2015, at 6:29 PM, Todd B. Hilsee <thilsee@hilseegroup.com> wrote:

> Steve,
> I appreciate your interest. Unfortunately what you suggest does not work for me. Best for you to suggest in your submission that you are familiar with my work (if you are so inclined) and you feel certain that your work would meet with my approval if I were asked by the Court or one of the parties to scrutinize it. Best of luck with the project.
> With kindest regards,
>
> Todd
>
> Todd B. Hilsee
> Principal
> The Hilsee Group LLC
> +1-215-486-2658 office
> +1-215-272-7006 cell
> thilsee@hilseegroup.com
> www.hilseegroup.org
>
> ***
> This E-Mail is intended only for the use of the individual or entity to which it is addressed, and may

contain information that is privileged, confidential and exempt from disclosure under applicable law. It is the property of The Hilsee Group LLC. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you have received this communication in error, please do not distribute it and notify us immediately by email: postmaster@hilseegroup.com or via telephone: 215-486-2658 and delete the original message including attachments. Unless expressly stated in this e-mail, nothing in this message or any attachment should be construed as a digital or electronic signature.
****

From: Steve Weisbrot [mailto:steve@angeiongroup.com]
Sent: Friday, January 09, 2015 5:14 PM
To: Todd B. Hilsee
Subject: Re: Potential Joint Venture

Sorry you are under the weather. Perhaps I should have been clearer. It was our intention to potentially offer you a substantial consulting fee ($50,000) to merely review a notice program that we put together, and to issue an affidavit of due process. Other then potentially offering some suggestions on the existing plan that would allow you to sign the affidavit, there would be no planning required on your part.
Please let me know if you are interested in discussing.

Steven Weisbrot, Esq.
Executive Vice President
1801 Market Street, Suite 660
Philadelphia, PA 19103
856.236.7627 (M)
215.563.4116 (P)
Steve@angeiongroup.com
www.angeiongroup.com

Sent from my iPhone

On Jan 9, 2015, at 4:52 PM, Todd B. Hilsee <thilsee@hilseegroup.com> wrote:

> Steve,
> Thanks for your email and I hope you have a good year as well. Unfortunately I think I should clarify your memory in that I would have informed you that I do not do joint ventures with or through administrators and do not bid on work. If you want to discuss a project where you may recommend my expertise to a client you may do so but I will not agree to confidentiality and that call will not constitute a conflict of interest in that or any other matter. I'm sorry to be so blunt but have the flu. In any event I hope this helps you going forward. Best
> Todd

Sent from Todd B. Hilsee's iPhone

On Jan 9, 2015, at 4:46 PM, Steve Weisbrot <steve@angeiongroup.com> wrote:

> Hi Todd,
> I hope you are well and that you and yours had an excellent holiday season!
> When we spoke you mentioned that you might be inclined to work together on larger one-off deals. With that in mind I was hoping we could set a call next week? We have been asked to bid on an extremely large consumer matter and would love to discuss bringing your expertise to the project.
> I do need you to assure me confidentiality before proceeding. Please confirm and let me know if we can find some time to speak early next week.
> Looking forward to talking.
> Best,
> Steve
> **Steven Weisbrot, Esq.**
> *Executive Vice President*
> 1801 Market Street, Suite 660
> Philadelphia, PA 19103
> 856.236.7627 (M)
> 215.563.4116 (P)
> Steve@angeiongroup.com
> www.angeiongroup.com
>
> Sent from my iPhone